

SUPPORTING STATEMENT
United States Patent and Trademark Office
Fee Deficiency Submissions
OMB CONTROL NUMBER 0651-00xx
(May 30, 2012)

A. JUSTIFICATION

1. Necessity of Information Collection

The Leahy-Smith America Invents Act was enacted into law on September 16, 2011. See Pub. L. 112-29, 125 Stat. 283 (2011). Section 10(a) of the Leahy-Smith America Invents Act provides that the USPTO may set or adjust by rule any patent fee established, authorized, or charged under title 35, United States Code, provided that fees only recover the aggregate estimated costs to the USPTO for processing, activities, services, and materials relating to patents (including administrative costs). See 125 Stat. at 316. Section 10(b) of the Leahy-Smith America Invents Act provides that “the fees set or adjusted under [section 10(a)] for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents shall be reduced by 50 percent with respect to the application of such fees to any small entity that qualifies for reduced fees under [35 U.S.C.] 41(h)(1) . . . , and shall be reduced by 75 percent with respect to the application of such fees to any micro entity as defined in [35 U.S.C.] 123.” See 125 Stat. at 316-17. The patent laws provided in 35 U.S.C. 41(h) for small entities prior to the Leahy-Smith America Invents Act. Section 10(g) of the Leahy-Smith America Invents Act adds a new 35 U.S.C. 123 to define a “micro entity.” See 125 Stat. at 318-19.

The USPTO published a notice of proposed rulemaking titled “Changes to Implement Micro Entity Status for Paying Patent Fees” (RIN 0651-AC78) in the *Federal Register*. In the notice, the USPTO proposed to amend the rules of practice in patent cases to implement the micro entity provisions of the Leahy-Smith America Invents Act. For example, the USPTO proposed in the notice changes to the rules of practice to set out the procedures pertaining to correction of payments of patent fees paid erroneously in the micro entity amount.

In support of the proposed rulemaking, the USPTO is submitting this new information collection, Fee Deficiency Submissions. The information in this collection can be submitted electronically through EFS-Web, the USPTO’s Web-based electronic filing system, as well as on paper. The USPTO is therefore accounting for both electronic and paper submissions in this collection.

Table 1 provides the statutes and regulations authorizing the USPTO to collect the information:

Table 1: Information Requirements for Fee Deficiency Submissions

Requirement	Statute	Rule
Submissions Under 37 CFR 1.28(c)	35 U.S.C. § 41(h)	37 CFR 1.28
Submissions Under 37 CFR 1.29(k)	35 U.S.C. § 123	37 CFR 1.29

2. Needs and Uses

This information collection is necessary so that patent applicants and patentees may pay the balance of fees due (i.e., fee deficiency payment) when a fee was previously paid in error in a micro or small entity amount. The USPTO needs the information to be able to process and properly record a fee deficiency payment to avoid questions arising later either for the USPTO or for the applicant or patentee as to whether the proper fees have been paid in the application or patent.

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 this information collection and its supporting statement comply with all applicable information quality guidelines, i.e., OMB and specific operating unit guidelines.

Table 2 outlines how this collection of information is used by the public and the USPTO:

Table 2: Needs and Uses for Fee Deficiency Submissions

Form and Function	Form #	Needs and Uses
Submissions Under 37 CFR 1.28(c)	No Form	<ul style="list-style-type: none"> Used by patent applicants and patentees to pay the balance of fees due when a fee was previously paid in error in a small entity amount. Used by the USPTO to process and properly record a fee deficiency payment to avoid questions arising later either for the USPTO or for the applicant or patentee as to whether the proper fees have been paid in the application or patent.
Submissions Under 37 CFR 1.29(k)	No Form	<ul style="list-style-type: none"> Used by patent applicants and patentees to pay the balance of fees due when a fee was previously paid in error in a micro entity amount. Used by the USPTO to process and properly record a fee deficiency payment to avoid questions arising later either for the USPTO or for the applicant or patentee as to whether the proper fees have been paid in the application or patent.

3. Use of Information Technology

The items in this collection may be submitted online using EFS-Web, the USPTO's Web-based electronic filing system.

EFS-Web allows customers to file patent applications and associated documents electronically through their standard Web browser without downloading special software, changing their document preparation tools, or altering their workflow processes. Typically, the customer will prepare the documents as standard PDF files and then upload them to the USPTO servers using the secure EFS-Web interface. EFS-Web offers many benefits to filers, including immediate notification that a submission has been received by the USPTO, automated processing of requests, and avoidance of postage or other paper delivery costs.

4. Efforts to Identify Duplication

The information collected is required to process and record a fee deficiency payment when a fee was previously paid in error in a micro or small entity amount. This information is not collected elsewhere and does not result in a duplication of effort.

5. Minimizing the Burden to Small Entities

This collection of information will not impose a significant economic impact on a substantial number of small entities. Furthermore, there are no filing fees associated with this information collection.

6. Consequences of Less Frequent Collection

The information in this collection is collected only when a patent applicant or patentee previously paid a fee in error in a micro or small entity amount. Less frequent collection of this information would impact the USPTO's ability to: (i) process and properly record a fee deficiency payment; and (ii) answer questions arising later either for the USPTO or for the applicant or patentee as to whether the proper fees have been paid in an application or patent. Thus, this information could not be collected less frequently.

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 USPTO published a notice of proposed rulemaking titled "Changes to Implement Micro Entity Status for Paying Patent Fees" (RIN 0651-AC78) in the *Federal Register*.

The USPTO has long-standing relationships with groups from whom patent application data is collected, such as the American Intellectual Property Law Association (AIPLA), as well as patent bar associations, independent 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.

9. Payment or Gifts to Respondents

This information collection does not involve a payment or gift to any respondent.

10. Assurance of Confidentiality

Confidentiality of patent applications is governed by statute (35 U.S.C. § 122) and regulation (37 CFR 1.11 and 1.14). Upon publication of an application or issuance of a patent, the entire patent application file is made available to the public (subject to provisions for providing only a redacted copy of the file contents). Therefore, the information collected by this collection will necessarily be available to the public when it is either filed in a published application or issued patent, or when it is filed in an application that is later published or issued as a patent.

11. Justification of Sensitive Questions

None of the required information in this collection 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 will receive approximately 3,000 total responses per year for this collection. The respondents for this collection may be summarized as patent applicants and patentees who: (i) established their status as a small entity in error, or through error did not notify the USPTO of a loss of entitlement to small entity status; or (ii) established their status as a micro entity in error, or through error did not notify the USPTO of a loss of entitlement to micro entity status. Respondents (i) will necessarily be non-small entities. Respondents (ii) will either be non-small entities or small entities (the proposed rules require an applicant claiming micro entity status to certify that the applicant qualifies as a small entity). Therefore, a maximum of 750 (25%) of the responses collected annually will be filed by small entities.

Approximately 93% of the responses for this collection will be submitted electronically via EFS-Web.

- **Burden Hour Calculation Factors**

The USPTO estimates that it will take the public approximately 2 hours to submit the information in this collection, including the time to gather the necessary information, prepare the appropriate form or petition, and submit the completed request to the USPTO.

- **Cost Burden Calculation Factors**

The USPTO uses a professional rate of \$371 per hour for the respondent cost burden calculations, which is the mean rate for attorneys in private firms as shown in the 2011 *Report of the Economic Survey* published by the American Intellectual Property Law Association (AIPLA).

Table 3: Burden Hours/Burden Costs to Respondents for Fee Deficiency Submissions

Item/Form No.	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a x b)	Rate (\$/hr) (d)	Total Cost (\$/yr) (e) (c x d)
Submissions Under 37 CFR 1.28(c)	2.0	2,250	4,500	\$371.00	\$1,669,500.00
Submissions Under 37 CFR 1.29(k)	2.0	750	1,500	\$371.00	\$556,500.00
Totals	-----	3,000	6,000	-----	\$2,226,000.00

13. Total Annual (Non-hour) Cost Burden

There are postage costs associated with the items in this collection. Specifically, customers may incur postage costs when submitting the information in this collection to the USPTO by mail through the United States Postal Service. The USPTO estimates that the average first class postage cost for a mailed one-pound submission will be \$4.95 and approximately 210 submissions will be submitted to the USPTO requiring postage.

Table 4: Postage Costs to Respondents for Fee Deficiency Submissions

Item	Responses (yr) (a)	Postage Costs (b)	Total Cost (yr) (a x b)
Submissions Under 37 CFR 1.28(c)	158	\$4.95	\$782.00
Submissions Under 37 CFR 1.29(k)	52	\$4.95	\$257.00
Totals	210	-----	\$1,039.00

In sum, the USPTO estimates that the total annualized (non-hour) cost burden for this collection is due to postage costs of \$1,039 per year.

14. Annual Cost to the Federal Government

The USPTO estimates that it takes a GS-7, step 1, employee approximately 15 minutes (0.25 hours) on average to process the items in this collection.

The hourly rate for a GS-7, step 1, employee is currently \$20.22 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 and overhead), the rate per hour for a GS-7, step 1, employee is \$26.29 (\$20.22 + \$6.07).

Table 5 calculates the burden hours and costs to the Federal Government for processing the items in this information collection:

Table 5: Burden Hours/Burden Costs to the Federal Government for Fee Deficiency Submissions

Item/Form No.	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a x b)	Rate (\$/hr) (d)	Total Cost (\$/yr) (e) (c x d)
Submissions Under 37 CFR 1.28(c)	0.25	2,250	563	\$26.29	\$14,801.00
Submissions Under 37 CFR 1.29(k)	0.25	750	188	\$26.29	\$4,943.00
Totals	-----	3,000	751	-----	\$19,744.00

15. Reason for Changes in Annual Burden

The USPTO is submitting this new information collection request in support of a notice of proposed rulemaking titled "Changes to Implement Micro Entity Status for Paying Patent Fees" (RIN 0651-AC78). In the notice, the USPTO proposed to amend the rules of practice in patent cases to implement the micro entity provisions of the Leahy-Smith America Invents Act. Thus, the proposal to change the rules of practice to provide a procedure for correcting payment of patent fees paid erroneously in the micro entity amount, and the information to be collected in accordance with the proposed procedure (i.e., submissions under 37 CFR 1.29(k)), is a direct result of the new statute. In addition, the USPTO is grouping in this collection the requirement associated with the corresponding small entity provisions of the rules of practice for notifying the USPTO of loss of small entity status and correcting payments of patent fees paid erroneously in the small entity amount.

The USPTO estimates that it will receive 3,000 responses for this collection annually and that the associated burden will be 6,000 hours per year. **Therefore, an additional 6,000 burden hours per year will be added to the USPTO's current information collection inventory as a program change.**

There is non-hour cost burden in the form of postage costs associated with this information collection, which amounts to \$1,039 per year. **Therefore, an additional \$1,039 per year in the way of non-hour cost burden will be added to the USPTO's current information collection inventory as a program change.**

16. Project Schedule

The USPTO does not plan to publish this information for statistical use or any other purpose.

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. Exceptions to the Certificate Statement

This collection of information does not include any exceptions to the certificate statement.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection of information does not employ statistical methods.