

Supporting Statement

Regulations Relating to Recordation and Enforcement of Trademarks and Copyrights (Part 133 of the Customs Regulations) 1651-0123

A. Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

19 U.S.C. § 1526(e) prohibits the importation of articles that bear a counterfeit mark of a trademark that is registered with the United States Patent and Trademark Office (USPTO) and recorded with U.S. Customs and Border Protection (CBP). 15 U.S.C. § 1124 prohibits the importation of articles that copy or simulate the name of a manufacturer or trader, or copy or simulate a trademark registered with the USPTO. 17 U.S.C. § 602 and 17 U.S.C. § 603 prohibit the importation of articles that constitute an infringement of copyright in protected copyrighted works. 15 U.S.C. § 1124 and 17 U.S.C. § 602-603 authorize the Secretary of the Treasury through CBP to promulgate regulations for the enforcement of these provisions that require that the party seeking exclusion of merchandise provide proof that the right in which such party claims an interest is valid and that the importation of specified articles would violate these provisions of law related to Intellectual Property Rights (IPR). CBP officers enforce these rights at the border.

The information that respondents must submit in order to seek the assistance of CBP to protect against infringing imports is specified for trademarks under 19 CFR 133.2 and 133.3, and the information to be submitted for copyrights is specified under 19 CFR 133.32 and 133.33. Trademark and trade name owners and those claiming copyright protection must provide information sufficient to enable CBP officers to identify violating articles at the border. Respondents may submit this information through the IPR e-Recordation website at <https://apps.cbp.gov/e-recordations/>.

- 2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**

The information collected by CBP is used to ensure that CBP has adequate information to identify infringing goods at the borders and that such goods infringe on intellectual property rights for which federal law provides import protection.

- 3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision**

for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

CBP developed an on-line recordation system which allows respondents to apply for recordations using the internet. The CBP recordation site is located at <https://apps.cbp.gov/e-recordations/>. Approximately 95 percent of applicants apply using this website.

Instructions for use of this program can also be found on CBP's website at http://www.cbp.gov/linkhandler/cgov/trade/legal/informed_compliance_pubs/enforce_ipr.ctt/enforce_ipr.pdf

- 4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

This information is not duplicated in any other place or any other form.

- 5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.**

This information collection does not have an impact on small businesses or other small entities.

- 6. Describe consequences to Federal program or policy activities if the collection is not conducted or is conducted less frequently.**

CBP cannot effectively provide protection against imports that infringe trademarks and copyrights without requiring this information. Individual trademark owners and users of trade names and individuals claiming copyright protection will suffer the effects of increased numbers of infringing importations without this collection of information.

- 7. Explain any special circumstances that would cause an information collection to be conducted in a manner:**

- **requiring respondents to report information to the agency more often than quarterly;**
- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **requiring respondents to submit more than an original and two copies of any document;**
- **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**
- **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **requiring the use of statistical data classification that has not been reviewed and approved by OMB;**

- **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

This information is collected in a manner consistent with the guidelines of 5 CFR 1320.5(d)(2).

- 8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

Public comments were solicited through two Federal Register notices published on October 22, 2012 (Volume 77, Page 64533) on which two comments were received, and on January 8, 2013 (Volume 78, Page 1220) on which no comments have been received.

A letter dated December 17, 2012, was received from Joseph Potenza of the American Bar Association (ABA). CBP also received a call from James L. Bikoff on behalf of the ABA regarding the 60-day notice to extend the IPR e-Recordations ICR. The ABA supports the extension of this ICR and they believe the e-Recordations website is a quick and efficient method of providing the information. They also concur with the burden hour estimate of 2 hours per response and that the \$190 recordation fee is fair.

CBP also received a letter, dated December 20, 2012, from Alan Drewsen of the International Trademark Association (INTA). In his letter he states that the CBP trademark registration system should be linked with the U.S. Patent and Trademark Office so the recordation with CBP can take place immediately. CBP does not share this view. Linking CBP's recordation system with the registration systems of the U.S. Patent and Trademark Office and the U.S. Copyright Office has been considered by the agencies involved. Several options for accomplishing such linkage were examined but all were found wanting inasmuch as it was determined that the burden on the agencies' resources would far outweigh the nominal benefits that would accrue to the agencies or to right owners.

He also states that the renewal of trademark rights for CBP recordation databases should be made electronic. CBP concurs with this comment and has already begun work on implementing electronic recordation renewals.

Mr. Drewsen also makes the point that a form should be developed for trademark owners seeking the Lever-rule protection. CBP does not consider that a form would be suitable for determining eligibility for Lever-rule protection which available to the owners of recorded trademarks on the basis of physical and material differences, as set forth in Lever Bros. Co. v. United States, 981 F.2d 1330 (D.C. Cir. 1993). The procedures for requesting Lever-rule protection are a matter of public record and are set forth in 19 CFR Part 133. Given that requests for Lever-rule eligibility must be stated with particularity on a case-by-case basis, however, CBP does not consider them to be susceptible of resolution through the means of a standard form.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

There is no offer of a monetary or material value for this information collection.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

A Privacy Threshold Analysis (PTA) has been completed and is included in this ICR. A PIA called Intellection Property Rights e-Recordations and Search Systems, dated December 11, 2012 are included in the ICR. A SORN for Intellection Property Rights e-Recordations and Search Systems dated January 15, 2013 (Volume 78, Page 3015) are included in this ICR.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

There are no questions of a sensitive nature associated with this collection.

12. Provide estimates of the hour burden of the collection of information.

| INFORMATION COLLECTION | TOTAL ANNUAL BURDEN HOURS | NO. OF RESPONDENTS | NO. OF RESPONSES PER RESPONDENT | TOTAL RESPONSES | TIME PER RESPONSE |
|-----------------------------|---------------------------|--------------------|---------------------------------|-----------------|-----------------------|
| IPR Recordation Application | 4,000 | 2,000 | 1 | 2,000 | 2 hours (120 minutes) |

Public Cost

The estimated cost to the respondents is \$300,000. This is based on the estimated burden hours (4,000) multiplied (x) the average hourly rate (\$75.00).

13. Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information.

There are no record keeping, capital, start-up or maintenance costs associated with this information collection.

For informational purposes there is a recordation fee associated with this collection of \$190, times the number of respondents (2,000) = \$380,000.

14. Provide estimates of annualized cost to the Federal Government. Also provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information.

The cost to the government is partially offset by a fee charge of \$190. The cost to the government is \$390,000 which is based on the number of responses (2,000) multiplied by the time per response to process each request (3 hours) = 6,000 hours multiplied by the average hourly cost (\$65.00) = \$390,000.

15. Explain the reasons for any program changes or adjustments reported in Items 12 or 13.

There has been no increase or decrease in the estimated annual burden hours previously reported for this information collection. There is no change to the information collected or to the e-Recordation website.

16. For collection of information whose results will be published, outline plans for tabulation, and publication.

This information collection will not be published for statistical purposes.

17. If seeking approval to not display the expiration date, explain the reasons that displaying the expiration date would be inappropriate.

CBP will display the expiration date for OMB approval of this information collection.

18. "Certification for Paperwork Reduction Act Submissions."

CBP does not request an exception to the certification of this information collection.

A. Collection of Information Employing Statistical Methods

No statistical methods were employed.