SUPPORTING STATEMENT
United States Patent and Trademark Office
Grace Period Study
OMB Control Number 0651-00xx
(Modified Submission – September 30, 2013)

A. JUSTIFICATION

1. Necessity of Information Collection

The United States provides inventors with a one-year grace period following their public disclosure of patent-eligible inventions during which they can file patent applications for those inventions. This grace period allows inventors to improve upon their ideas by sharing them with the research and business communities without jeopardizing their intellectual property interests. Many European countries, however, offer grace periods of less than one year or do not offer grace periods of any length. The consequences of this are not fully understood. Few studies conducted in the past ten years have considered these countries' disclosure requirements, and none have investigated the effects of these requirements on scientific researchers' failure to apply for or receive patents. To study this issue, the USPTO plans to conduct a pilot study on the relationship between European countries' lack of one-year grace periods and researchers' patenting activities.

The USPTO plans to survey European scientific researchers identified to have published articles containing patent-eligible inventions during a five-year period. The USPTO envisions that the respondents will only be surveyed one time. The survey itself may be distributed in waves for convenience.

The Grace Period Study Survey will guide research on the significance of the one-year grace period and premature disclosure. This pilot study would support the USPTO's efforts to be a leader on intellectual property matters internationally and to promote efficiency and cooperation in the global patent system because of the prominence of the grace period in discussions on international patent harmonization. The results of the study will not be used for rulemaking. The study may be shared with stakeholders interested in conducting research on the grace period or related topics.

This is a voluntary survey. The collected data will not be linked to the respondent and contact information that is used for sampling purposes will be maintained in a separate file from the quantitative data. Respondents are not required to provide any identifying information such as their name, address, or Social Security Number.

There are no statutes or regulations requiring the USPTO to conduct these customer surveys. The USPTO uses surveys to implement Executive Order 12862 of September 11, 1993, *Setting Customer Service Standards*, published in the *Federal Register* on September 14, 1993 (Volume 58, Number 176).

2. Needs and Uses

The Grace Period Study Survey will be an electronic survey conducted by the USPTO to gather data on lost commercial opportunities in European countries due to their lack of one-year grace periods to file patent applications. Data would be used to evaluate the effects of premature disclosure of patentable inventions or ideas on researchers' failures to apply for or receive patents.

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 1 outlines how this collection of information is used by the public and the USPTO.

Table 1: Needs and Uses

Item	Form #	Needs and Uses
Grace Period Study Survey	No Form	• Used by foreign governments, researchers, and other stakeholders to evaluate the effects of premature disclosure of patentable inventions or ideas on researchers' failures to apply for or receive patents. • Used by the USPTO to gather data to estimate the value of lost commercial opportunities in Europe due to the lack of adequate patent grace periods in many European countries.

3. Use of Information Technology

The Grace Period Study Survey will be an electronic survey. All contact with the respondents will be entirely electronic. The survey will be distributed electronically over the Internet through a secure, third-party survey distributor using access information supplied to them by the USPTO via their survey contractor. In order to access and complete the online survey, respondents will need to use a username, password, and survey ID number. This information, along with instructions for accessing and completing the survey, will be provided in a cover letter that will be e-mailed to the respondents along with the survey.

At this time, the USPTO does not plan to disseminate any of the information collected from the surveys electronically. As more of these surveys are conducted, the USPTO will reevaluate whether this would be beneficial.

4. Efforts to Identify Duplication

No researchers, including the USPTO, have conducted studies directly surveying European scientific researchers on the relationship between their countries lack of a one-year grace period and their failure to apply for or receive patents. The pilot survey questions relate directly to the researchers' decisions whether or not to try patenting their inventions after they have been published in scientific journals. This information is not generally available from other sources and is not collected elsewhere. Therefore, this collection does not create a duplication of effort.

5. Minimizing the Burden to Small Entities

In an effort to minimize burden, the survey questions have been kept short and simple. Respondents can complete the entire survey electronically which will also minimize the burden.

In an effort to minimize the burden, the number of questions are limited to the minimum necessary to obtain useful information. Respondents can complete the entire survey electronically, which will also minimize the burden.

6. Consequences of Less Frequent Collection

The information collected from the Grace Period Study Survey is needed so that the USPTO can study the effects that the lack of grace periods in many European countries have on individuals trying to obtain patents on their inventions and ideas. The data from this survey would provide current, quantitative data on the effects of premature disclosure on the ability of individuals to obtain patents in European countries. This study would support the USPTO's efforts to be a leader on intellectual property matters internationally and to promote efficiency and cooperation in the global patent system. If the USPTO did not conduct this study, the agency would not fully understand the consequences for the European patenting community stemming from the lack of adequate grace periods.

7. Special Circumstances in the Conduct of Information Collection

There are no special circumstances associated with this collection of information.

8. Consultation Outside the Agency

The 60-Day *Federal Register* Notice was published on December 10, 2012 (77 Fed Reg. 73452). The public comment period ended on February 8, 2013. One public comment was received.

The comment summarizes various arguments for and against strong patent protections and patent harmonization from the perspective of U.S. competitiveness. The comment notes that these arguments depend, crucially, on the incentive effects of patents on U.S. and foreign firms, but that empirical data concerning these effects is scarce.

The comment suggests that, to determine the extent to which the United States' grace period provides foreign inventors with incentives to invent, the survey ask European respondents whether they filed patent protection in the United States following their publication of their inventions. This suggestion is well-taken. The draft survey contains a question asking respondents to identify the countries in which they filed patent applications for the invention identified by the survey, including the United States. However, researchers should be cautious when generalizing the survey results to European inventors as a whole since the survey is directed towards a specific subpopulation of inventors.

IIPI consulted a limited number of technology transfer experts on the survey design. These experts did not comment on the time required to provide the information requested in the survey.

Finally, no specific feedback was solicited from the Patent Public Advisory Committee, but they were briefed on the USPTO's intentions with the Grace Period Study Survey. No objections were raised by the Committee.

9. Payment or Gifts to Respondents

This information collection does not involve a payment or gift to any respondent. This survey is voluntary, so the respondent is not required to answer the questions.

10. Assurance of Confidentiality

The raw data collected from the surveys is not released and is retained by IIPI to ensure the privacy of the responses. IIPI will only report the aggregated data and the frequency of the responses. They will not report the individual responses to the survey or report on any comments about the survey. The USPTO's contract with IIPI prohibits USPTO from requesting from IIPI individual responses or any information that could be used to identify respondents.

The USPTO does not intend to collect any personal identifying data from respondents. Survey respondents will be researchers of institutions.

Information collected will be kept private, to the extent of the law. All contact information that is used for sampling purposes will be maintained in a separate file from the quantitative data. IIPI will provide the USPTO with aggregate data and information on the frequency of responses. The USPTO will not receive the individual responses or the data related to the survey.

Respondents are not required to provide any identifying information such as their name, address, or Social Security Number to complete the survey. In order to access and complete the online survey, applicants will need to use a username, password, and survey identification number. The survey identification number will be used for the purpose of making a distinction between universities. Every university will have its unique ID. Since there are 3,000 researchers, and many at the same university, a respondent's identity cannot be determined by their identification number. The identification number will be provided to them by the USPTO's survey contractor in the cover letter that will be distributed along with the survey. Only the identification number will be recorded after survey is submitted to the respondents. Also, the username and passwords will not be submitted after completion of the survey. There will be no way to match respondents with their responses.

Confidential and proprietary information is protected in accordance with USPTO regulations, although there is no statutory or contractual basis for extending confidentiality. All survey results will be kept private, in that there is non-attribution of responses to an identifiable person in reporting the data. However, the survey responses are not anonymous (meaning that there is no identifier attached to the responses). IIPI is not under any obligation to retain or store any identifying information.

Survey respondents will be advised on the survey form or in a privacy statement that participation is voluntary and that the data provided will be kept private, to the extent of the law. Participants will be assured of the confidentiality of their replies to the extent permitted by law under 5 U.S.C. §552 (Freedom of Information Act), 5 U.S.C. §552a (Privacy Act of 1974), OMB Circular No. A-130, or other applicable law. The USPTO and its external contractors follow all procedures and policies as stipulated under the Privacy Act of 1974.

The survey responses will reside on the electronic survey tool's and IIPI's protected web servers, but the actual distribution of the data will be controlled by IIPI through their dedicated account. Since the data resides on a protected server and the distribution of the data is controlled, IIPI does not need any usernames or passwords to access the survey data.

The survey responses, the contact and respondent information, and the e-mail invitation will reside in three different files in secured folders on the electronic survey tool's and IIPI's servers. One file will contain the survey results, which will be created from the survey responses. The second file will contain the contact information used to identify where to send the e-mail invitations and the demographic data obtained from the respondents. The third file will identify the respondents who were sent the e-mail invitation and will contain the e-mail invitation. These three files are relational files.

11. Justification for Sensitive Questions

None of the required information in this collection is considered to be of a sensitive nature.

12. Estimate of Hour and Cost Burden to Respondents

Table 2 displays the burden hours and costs of this information collection to the public for each year of the study, based on the following calculation factors:

- **Respondent Calculation Factors**
  Out of a sample size of 3,000, the USPTO estimates that 420 completed surveys will be received, for a response rate of 14%. This estimate is based on the response rate of a similar survey of German researchers conducted by the German Ministry for Education

and Research (BMBF). The USPTO estimates that none of these surveys will be submitted by small entities. The USPTO estimates that all of the surveys will be submitted electronically.

These estimates are based on the Agency's long-standing institutional knowledge of and experience with the type of information collected by these items.

- **Burden Hour Calculation Factors**
  The USPTO estimates that it takes the public approximately ten minutes (0.17 hours) to complete this survey. This estimated time includes reading the instructions for the survey, gathering the necessary information, completing the survey, and submitting it to the USPTO.

  These estimates are based on the Agency's long-standing institutional knowledge of and experience with the type of information collected and the length of time necessary to complete responses containing similar or like information.

- **Cost Burden Calculation Factors**
  The USPTO estimates that scientists will be completing these surveys and that their hourly rate will be comparable to the hourly rate for scientists in the United States. Using the hourly mean rate of $46.29 from the U.S. Bureau of Labor Statistics for physical scientists and others, the USPTO estimates $3,287 per year for the respondent cost burden for this collection.

  Based on the Agency's long-standing institutional knowledge of and experience with the type of information collected, the Agency believes $46.29 is an accurate estimate of the cost per hour to collect this information.

Table 2: Burden Hour/Burden Cost to Respondents

Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a) x (b)	Rate ($/hr) (d)	Total Cost ($/hr) (e) (c) x (d)
Grace Period Study Survey	0.17	420	71	$46.29	$3,287.00
Total	**- - - -**	**420**	**71**	**- - - -**	**$3,287.00**

13. Total Annualized Cost Burden

There are no annual (non-hour) costs associated with this information collection. The USPTO covers the costs of all survey materials. There are no fees of any sort associated with the survey and the survey is entirely electronic, so there are no postage costs associated with it either. Therefore, this information collection does not impose any additional annual (non-hour) costs on the respondent.

14. Annual Cost to the Federal Government

The USPTO has hired a contractor to conduct the Grace Period Study Survey, so this survey is not conducted or processed by USPTO personnel. The USPTO estimates that the contractor will spend about $149,000 to identify potential respondents and collect data. These costs include developing, conducting, and processing the survey. This estimate includes various tasks such as processing the related survey correspondence, performing data entry tasks, sampling, analyzing the data gathered, and preparing reports on the findings. This estimate also includes all labor costs and other direct costs.

15. Reason for Change in Burden

The USPTO is conducting the Grace Period Study survey in order to collect quantitative data on the effects of premature disclosure on European patenting and to estimate the value of lost commercial opportunities in Europe due to the lack of grace periods. The USPTO estimates that this new collection will have 420 responses, 71 burden hours, and $0 in annual (non-hour) costs. The USPTO also estimates that this collection will have $3,287 in respondent cost burden.

With the approval of this collection, the USPTO estimates that 420 responses and 71 burden hours will be added to the current information collection inventory due to a program change.

16. Project Schedule

The USPTO does not plan to publish this information for statistical use.

After data collection is completed, a report summarizing the results of the survey will be prepared by IIPI. The primary audience of this report is the USPTO. The USPTO may choose to share particular findings with customers through normal communication vehicles such as lectures and general office publications, but there are no plans for a survey-specific formal report to be distributed to respondents or the public at large.

The primary goal is to determine the effects of premature disclosure on European researchers' failure to apply for or receive patents. Respondents will be asked questions concerning their experiences with and attitudes toward patenting both in specific cases identified in the survey and generally. Respondents will be filtered using demographic data to identify trends between subpopulations of respondents. However, identifying these trends is not the primary goal of the survey. Standard error calculation will be used.

IIPI is responsible for submitting to USPTO all evaluation data collection information, tabulation, and analysis, and a final performance report. The contractor will also submit preliminary and draft reports to USPTO for iterative review.

IIPI may distribute the survey in waves for convenience. IIPI will complete distributing the survey no more than one month after beginning to distribute the survey; complete collecting data no more than two months after beginning to distribute the survey; and analyze, review, and submit the results to USPTO no more than three months after beginning to distribute the survey. IIPI will submit its final performance report no more than three months and thirty days after beginning to distribute the survey.

17. Display of Expiration Date of OMB Approval

Once approved, the Grace Period Study Survey will include the OMB Control Number and the expiration date.

18. Exception to the Certificate Statement

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