

SUPPORTING STATEMENT
United States Patent and Trademark Office
Legal Processes
OMB CONTROL NUMBER 0651-0046
(June 2013)

A. JUSTIFICATION

1. Necessity of Information Collection

The purpose of this collection is to cover information requirements related to civil actions and claims involving current and former employees of the United States Patent and Trademark Office (USPTO). The rules for these legal processes may be found under 37 CFR Part 104, which outlines procedures for service of process, demands for employee testimony and production of documents in legal proceedings, reports of unauthorized testimony, employee indemnification, and filing claims against the USPTO under the Federal Tort Claims Act (28 U.S.C. § 2672) and the corresponding Department of Justice regulations (28 CFR Part 14). The public may also petition the USPTO Office of General Counsel under 37 CFR 104.3 to waive or suspend these rules in extraordinary cases.

The procedures under 37 CFR Part 104 ensure that service of process intended for current and former employees of the USPTO is handled properly. The USPTO will only accept service of process for an employee acting in an official capacity. When a summons is served on a current or former USPTO employee, the employee should note the time, place, and method of service on the summons. The employee should then immediately notify and forward the summons to the Office of General Counsel at the USPTO. The Office of General Counsel will determine to what extent an employee may comply with a demand for testimony or documents. The USPTO will not authorize employee testimony on the validity of a patent grant or registered trademark. The rules governing production of documents do not affect any rights granted under the Freedom of Information Act (5 U.S.C. § 552), the Privacy Act (5 U.S.C. § 552a), or the Trade Secrets Act (18 U.S.C. § 1905). In cases involving unauthorized testimony or requests for indemnification, the employee must forward the relevant information or documentation to the Office of General Counsel.

There are no forms provided by the USPTO for this collection. For filing claims under the Federal Tort Claims Act, the public may use Standard Form 95 "Claim for Damage, Injury, or Death," which is provided by the Department of Justice and approved by the Office of Management and Budget (OMB) under OMB Control Number 1105-0008.

The specific statutes and regulations authorizing the USPTO to collect this information are provided in Table 1 below.

2. Needs and Uses

The public uses this collection to submit information required by USPTO regulations covering legal processes. This information collection is necessary so that respondents or their representatives may serve a summons or complaint on the USPTO, demand employee testimony and documents related to a legal proceeding, or file a claim under the Federal Tort Claims Act. Respondents may also petition the USPTO to waive or suspend these rules for legal processes. This collection is also necessary so that current and former USPTO employees may properly forward service and demands to the Office of General Counsel, report unauthorized testimony, and request indemnification.

The USPTO covers current employees as respondents under this information collection, even though their responses do not require approval under the Paperwork Reduction Act. In those instances where both current and former employees may respond to the USPTO, the agency estimates that the number of respondents will be small.

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 lists the specific statutes and regulations authorizing the USPTO to collect this information and outlines how this information is used by the public and the USPTO:

Table 1: Information Requirements and Needs and Uses of Information Collected

Item #	Requirement	Statute	Rule	Form Number	Needs and Uses
1	Petition to Waive Rules	35 U.S.C. §§ 2(b)(2) and 3(a)(2)	37 CFR 104.3	No Form Associated	<ul style="list-style-type: none"> Used by the public to petition the USPTO to either waive or suspend a rule. Used by the USPTO to determine whether the circumstances warrant the suspension of the rules.
2	Service of Process	35 U.S.C. § 2(b)(2)	37 CFR 104.11 and 104.12	No Form Associated	<ul style="list-style-type: none"> Used by the public to serve process on current and former USPTO employees. Used by the USPTO to accept service for current and former employees who are summoned in their official capacities.

Item #	Requirement	Statute	Rule	Form Number	Needs and Uses
3	Forwarding Service	35 U.S.C. § 2(b)(2)	37 CFR 104.12(b)	No Form Associated	<ul style="list-style-type: none"> Used by current or former USPTO employees to forward service of process to the Office of General Counsel. Used by the USPTO to accept service of process forwarded by employees.
4	Employee Testimony and Production of Documents in Legal Proceedings	35 U.S.C. § 2(b)(2)	37 CFR 104.22 and 104.23	No Form Associated	<ul style="list-style-type: none"> Used by the public to demand testimony or documents from current or former USPTO employees as part of a legal proceeding. Used by the USPTO to determine whether to authorize the testimony or release the documents.
5	Forwarding Demands	35 U.S.C. § 2(b)(2)	37 CFR 104.22(a)	No Form Associated	<ul style="list-style-type: none"> Used by current or former USPTO employees to forward demands for testimony or documentation to the Office of General Counsel. Used by the USPTO to accept demands forwarded by employees.
6	Report of Unauthorized Testimony	35 U.S.C. § 2(b)(2)	37 CFR 104.23(c)	No Form Associated	<ul style="list-style-type: none"> Used by current and former USPTO employees to report testimony given in a legal proceeding that was not reviewed by the Office of the General Counsel prior to the proceeding. Used by the USPTO Office of General Counsel to review unauthorized testimony.
7	Possible Indemnification Cases	35 U.S.C. § 2(b)(2)	37 CFR 104.31 and 104.32	No Form Associated	<ul style="list-style-type: none"> Used by current and former USPTO employees to report possible indemnification cases to the USPTO in order to start indemnification proceedings. Used by the USPTO Office of General Counsel to determine whether indemnification proceedings are needed.
8	Employee Indemnification	35 U.S.C. § 2(b)(2)	37 CFR 104.31 and 104.32	No Form Associated	<ul style="list-style-type: none"> Used by current and former USPTO employees to request indemnification from the Office of General Counsel in instances where a verdict, judgment, or award has been entered against them in a civil action or proceeding related to their official capacities at the USPTO. Used by the USPTO Office of General Counsel to determine whether to grant employee indemnification and to ensure that copies of the verdict, judgment, appeal bond, award or settlement proposal, and the employees' statements have been submitted regarding their actions and whether they have insurance or other sources of indemnification.

Item #	Requirement	Statute	Rule	Form Number	Needs and Uses
9	Tort Claims	28 U.S.C. § 2672, 35 U.S.C. § 2(b)(2)	37 CFR 104.41 and 104.42	No Form Associated	<ul style="list-style-type: none"> Used by the public to file claims against the USPTO under the Federal Tort Claims Act. Used by the USPTO Office of General Counsel to determine whether to settle or deny a claim.

3. Use of Information Technology

Currently, the USPTO does not use automated, electronic, mechanical, or other technologies to collect the information for this collection. The USPTO believes that it would not be practical to collect all of the information associated with the various legal proceedings electronically. It is unlikely that the documents associated with service of process or subpoenas requesting testimony or documents will be delivered to USPTO employees or the Office of General Counsel electronically, unless the servers themselves start delivering them electronically. Although it is conceivable for current or former employees to submit the actual request for indemnification to the Office of General Counsel electronically, they must also submit any associated documentation with it. Since this documentation can include the verdict, judgment, appeal bonds, awards, or settlement proposals, it is unlikely that this information will be submitted electronically unless the judicial system starts using this means of communication on a regular basis.

The USPTO believes that these circumstances also apply to the claims filed under the Federal Tort Claims Act. The Department of Justice has created a standard form that can be used to submit claims, although it is not mandatory for claimants to do so. In addition to the form, there are also statements, reports, bills, and other information that must be submitted with this form as appropriate. Since the USPTO rarely receives a claim under the Federal Tort Claims Act (it is rare for more than two to be submitted each year), it would not be practical to collect this information electronically.

At this time, the USPTO is not collecting the information covered under this collection electronically. As the USPTO expands the use of electronic filing, it may determine that it is feasible for the petitions and demands to be submitted to the USPTO electronically. If the USPTO does determine that these or other documents related to legal processes can be submitted electronically, the USPTO will develop and submit the associated electronic forms or formats for these items to OMB for review and approval as necessary.

The USPTO does not disseminate the information in this collection to the general public, electronically or otherwise.

4. Efforts to Identify Duplication

This information is collected when the public submits petitions to the USPTO to waive legal process rules, demands or subpoenas for testimony or documents, or claims under the Federal Tort Claims Act. The information associated with service of process is collected only when a summons is served on a current or former employee and the employee forwards the necessary information to the Office of General Counsel. The information associated with employee indemnification is collected only when a current or former employee requests indemnification and forwards the necessary documentation to the Office of General Counsel. When current or former USPTO employees report unauthorized testimony or possible cases for indemnification, they provide only the information pertaining to the testimony or indemnification to the Office of the General Counsel. This information is not collected elsewhere and does not result in a duplication of effort.

5. Minimizing Burden to Small Entities

The USPTO does not believe that this collection will have a significant impact on a substantial number of small businesses or other small entities. Historically, the USPTO has received very few filings for these proceedings, and very few of the filings involve small businesses or other small entities. The same information is required from every respondent, and this information is not available from any other source.

6. Consequences of Less Frequent Collection

This information is collected only at the initiation of the requestor and is not found elsewhere. Therefore, this collection of information could not be conducted less frequently. If the information were not collected, the USPTO would not be able to ensure compliance with case law and protect its legal interests related to service of process, demands for employee testimony and production of documents, unauthorized employee testimony, employee indemnification, and claims submitted under the Federal Tort Claims Act. The USPTO also would not be able to consider petitions to waive these rules in the interest of justice in extraordinary situations.

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 60-Day Notice was published in the *Federal Register* on March 4, 2013 (78 Fed. Reg. 14079). The comment period ended on May 3, 2013. No public comments were received.

9. Payment or Gifts to Respondents

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

10. Assurance of Confidentiality

The confidentiality of patent applications is governed by statute (35 U.S.C. § 122) and regulation (37 CFR 1.11 and 1.14). The USPTO has a legal obligation to maintain the confidentiality of the contents of unpublished patent applications and related documents. Upon publication of an application or issuance of a patent, the patent application file is made available to the public, subject to the provisions for providing only a redacted copy of the file contents.

When respondents submit demands in legal proceedings for the testimony of employees or the production of documents regarding information protected by the confidentiality provisions of the Patent Act (35 U.S.C. § 122), the Privacy Act (5 U.S.C. § 552a), the Trade Secrets Act (18 U.S.C. § 1905), or any other confidentiality statute, the demands must satisfy the requirements for disclosure as stated in those statutes and associated rules before the testimony may be given or the documents provided.

11. Justification for 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 2 calculates the burden hours and costs of this information collection to the respondents, based on the following factors:

- **Respondent Calculation Factors**

The USPTO estimates that it will receive approximately 299 responses per year for this collection, with approximately 10% of these responses submitted by small entities. None of the responses for this collection 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 will take the public from 5 minutes (0.08 hours) to 6 hours to gather the necessary information, prepare the appropriate documents, and submit the information required for this collection.

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 uses a professional rate of \$371 per hour for 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 Committee on Economics of Legal Practice of the American Intellectual Property Law Association (AIPLA).

The USPTO expects that the information in this collection will be prepared by attorneys and former employees, except for the requests for employee indemnification, which generally come from professional and supervisory staff. Since many of the former employees affected by this collection are attorneys, the estimated rate of \$371 per hour for attorneys will be used for former employees as well. Requests for employee indemnification generally come from professional and supervisory staff at an estimated cost of \$77.09 per hour (GS-15, step 1 hourly rate of \$59.30 plus 30% (\$17.79) for benefits and overhead).

Table 2: Burden Hour/Burden Cost to Respondents

Item #	Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a x b)	Rate (\$/hr) (d)	Total Cost (\$/yr) (e) (c x d)
1	Petition to Waive Rules	0.50	5	3	\$371.00	\$1,113.00
2	Service of Process	0.08	243	19	\$371.00	\$7,049.00
3	Forwarding Service	0.17	7	1	\$371.00	\$371.00
4	Employee Testimony and Production of Documents in Legal Proceedings	1.00	23	23	\$371.00	\$8,533.00
5	Forwarding Demands	0.17	10	2	\$371.00	\$742.00
6	Report of Unauthorized Testimony	0.50	1	1	\$371.00	\$371.00
7	Report of Possible Indemnification Cases	0.50	3	2	\$371.00	\$742.00
8	Employee Indemnification	0.50	1	1	\$77.09	\$77.00
9	Tort Claims	6.00	6	36	\$371.00	\$13,356.00
	Totals	.....	299	88	.....	\$32,354.00

13. Total Annual (Non-hour) Cost Burden

The total annual (non-hour) cost burden for this collection is calculated in Table 3 below. This collection has no capital start-up, maintenance, or recordkeeping costs.

Fees

This collection has filing fees associated with the petition to waive or suspend the legal process rules under 37 CFR 104.3.

Postage

The USPTO estimates that the average first-class postage for a mailed submission, other than a Service of Process, will be 92 cents. The USPTO estimates that the average postage for a Service of Process will be \$11.25 (Priority Mail flat-rate envelope with Certified Mail service and Return Receipt).

Table 3: Total Annual (Non-hour) Cost Burden for Respondents

Item #	Type of Cost	Estimated annual responses	Amount	Totals
1	Petition to Waive Rules – filing fee	5	\$130.00	\$650.00
	Total fees	....	....	\$650.00
1, 3-9	Postage for submissions, other than Service of Process	56	\$0.92	\$52.00
2	Postage for Service of Process	243	\$11.25	\$2,734.00
	Total postage for mailed submissions	....	....	\$2,786.00
	Total annual (non-hour) cost burden	....	....	\$3,436.00

14. Annual Cost to the Federal Government

The information in this collection is processed by a GS-15, step 1 employee at an estimated cost of \$77.09 per hour (GS hourly rate of \$59.30 with 30% (\$17.79) added for benefits and overhead). The rules impose no burden on the USPTO with regard to receiving service of process or forwarding service and demands for testimony or documents.

Table 4 calculates the burden hours and costs to the Federal Government for processing this information collection:

Table 4: Burden Hour/Burden Cost to the Federal Government

Item #	Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a x b)	Rate (\$/hr) (d)	Total Cost (\$/yr) (e) (c x d)
1	Petition to Waive Rules	1.50	5	8	\$77.09	\$617.00
2	Service of Process	0.08	243	19	\$77.09	\$1,465.00
3	Forwarding Service	0.08	7	1	\$77.09	\$77.00
4	Employee Testimony and Production of Documents in Legal Proceedings	0.50	23	12	\$77.09	\$925.00
5	Forwarding Demands	0.08	10	1	\$77.09	\$77.00
6	Report of Unauthorized Testimony	0.50	1	1	\$77.09	\$77.00
7	Report of Possible Indemnification Cases	0.50	3	2	\$77.09	\$154.00
8	Employee Indemnification	1.50	1	2	\$77.09	\$154.00
9	Tort Claims	3.00	6	18	\$77.09	\$1,388.00
	Totals	....	299	64	....	\$4,934.00

15. Reason for Changes in Burden from the Current Inventory

OMB previously approved this information collection in July 2010 with a total of 291 responses, 52 burden hours, and \$3,122 in annual (non-hour) costs. There have been no interim approvals.

Changes in Responses and Burden Hours from the Current Inventory

The USPTO estimates that the total annual responses will be 299 and the total annual burden hours will be 88, which is an increase of 8 responses and 36 burden hours from the currently approved burden for this collection. These changes are due to administrative adjustments from updated annual response estimates and an updated time estimate for Tort Claims (increase from 1 hour to 6 hours per response).

Table 5a: Changes in Responses and Burden Hours from the Current Inventory

Item #	Item	Currently approved responses	Updated responses	Change in responses (admin.)	Currently approved burden hours	Updated burden hours	Change in burden hours (admin.)
1	Petition to Waive Rules	5	5	0	3	3	0
2	Service of Process	243	243	0	19	19	0
3	Forwarding Service	7	7	0	1	1	0

Item #	Item	Currently approved responses	Updated responses	Change in responses (admin.)	Currently approved burden hours	Updated burden hours	Change in burden hours (admin.)
4	Employee Testimony and Production of Documents in Legal Proceedings	22	23	1	22	23	1
5	Forwarding Demands	7	10	3	1	2	1
6	Report of Unauthorized Testimony	1	1	0	1	1	0
7	Report of Possible Indemnification Cases	3	3	0	2	2	0
8	Employee Indemnification	1	1	0	1	1	0
9	Tort Claims	2	6	4	2	36	34
	Totals	291	299	8	52	88	36

Changes in Annual (Non-hour) Costs from the Current Inventory

The total annual (non-hour) cost burden for this submission of \$3,436 is an increase of \$314 from the currently approved total of \$3,122. This increase is due to administrative adjustments from updated response estimates and updated postage rates, resulting in increased total postage costs.

Table 5b: Changes in Annual (Non-hour) Costs from the Current Inventory

Cost	Currently approved annual cost burden	Program changes	Administrative adjustments	Total change in costs	Updated annual cost burden
Filing fees	\$650.00	\$0.00	\$0.00	\$0.00	\$650.00
Postage	\$2,472.00	\$0.00	\$314.00	\$314.00	\$2,786.00
Totals	\$3,122.00	\$0.00	\$314.00	\$314.00	\$3,436.00

16. Project Schedule

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

17. Display of Expiration Date of OMB Approval

There are no USPTO forms associated with this collection. Therefore, the display of the expiration date of OMB approval 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.