

**SUPPORTING STATEMENT**  
**United States Patent and Trademark Office**  
**Patent Law Treaty**  
**OMB CONTROL NUMBER 0651-0073**  
**(September 2013)**

**A. JUSTIFICATION**

**1. Necessity of Information Collection**

The Patent Law Treaties Implementation Act of 2012 (PLTIA) amends the patent laws to implement the provisions of the Hague Agreement Concerning International Registration of Industrial Designs (Hague Agreement) in title 1, and the Patent Law Treaty (PLT) in title II. The PLT harmonizes and streamlines formal procedures pertaining to the filing and processing of patent applications.

The USPTO published a notice of proposed rulemaking titled “Changes to Implement the Patent Law Treaty” (RIN 0651-AC85) in the *Federal Register*. In the notice, the USPTO proposed changes to the rules of practice for consistency with the changes in the PLT and title II of the PLTIA. One notable change pertains to the restoration of the right of priority to a foreign application or the benefit of a provisional application via the permitting of a claim to priority to a foreign application or the benefit of a provisional application in a subsequent application filed within two months of the expiration of the twelve-month period (six-month period for design applications) for filing such a subsequent application.

OMB filed a comment on the proposed collection in a Notice of Action dated June 27, 2013. The USPTO is re-submitting this information collection per that Notice of Action.

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 specific statute and regulations authorizing the USPTO to collect the information discussed above:

**Table 1: Information Requirements**

	<b>Requirement</b>	<b>Statute</b>	<b>Rule</b>
1	Petition to Restore the Right of Priority under 37 CFR 1.55(b)(2)	35 U.S.C § 119	37 CFR 1.55(b)(2)
2	Petition to Restore the Benefit of a Prior-Filed Provisional Application under 37 CFR 1.78(a)(1)(ii)	35 U.S.C § 119	37 CFR 1.78(a)(1)(ii)

## 2. Needs and Uses

This information collection is necessary so that patent applicants and/or patentees may seek restoration of the right of priority to a prior-filed foreign application or of the right to benefit of a prior-filed provisional application. The USPTO will use the petition to restore the right of priority to a prior-filed foreign application or the right to benefit of a prior-filed provisional application to determine whether the applicant has satisfied the conditions of the applicable statute (35 U.S.C. § 119) and regulation (proposed 37 CFR 1.55(b)(2) and 1.178(a)(1)(ii)).

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**

	<b>Form and Function</b>	<b>Form #</b>	<b>Needs and Uses</b>
1	Petition to Restore the Right of Priority under 37 CFR 1.55(b)(2)	No Form	<ul style="list-style-type: none"> <li>Used by patent applicants and/or patentees to petition to restore the right of priority under 37 CFR 1.55(b)(2) to a foreign application in an application.</li> <li>Used by the USPTO to determine whether the applicant and/or patentee has satisfied the conditions of the applicable statute (35 U.S.C. § 119 and regulation 37 CFR 1.55(b)(2)).</li> </ul>
2	Petition to Restore the Benefit of a Prior-Filed Provisional Application under 37 CFR 1.78(a)(1)(ii)	No Form	<ul style="list-style-type: none"> <li>Used by patent applicants and/or patentees to petition to restore the benefit of a prior-filed provisional application under 37 CFR 1.78(a)(1)(ii) in an application.</li> <li>Used by the USPTO to determine whether the applicant and/or patentee has satisfied the conditions of the applicable statute (35 U.S.C. § 119 and regulation 37 CFR 1.78(a)(1)(ii)).</li> </ul>

## 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 in order to restore the right of priority to a prior-filed foreign application, or the right to benefit of a prior-filed provisional application. 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. The same information will be required from every member of the public in the applicable situation and will not be available from any other source. 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 and/or patentee seeks restoration of the right of priority to a prior-filed foreign application or of the right to benefit of a prior-filed provisional application. Less frequent collection of this information would deny patent applicants and/or patentees their right under the statute to have the right of priority to a prior-filed foreign application or the right to benefit of a prior-filed provisional application restored. 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**

On April 11, 2013 the USPTO published a notice of proposed rulemaking titled "Changes to Implement the Patent Law Treaty" (RIN 0651-AC85) in the *Federal Register*. Public comments from the public on the notice of proposed rulemaking have been considered in development of the final rule.

In addition, 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. Views expressed by these groups are 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 filed in a published application or issued patent, or, if it is filed in an application that has yet to publish or issue as a patent, when the application publishes or issues 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 500 responses per year for this collection, with approximately 25% of these responses submitted by small entities. Approximately 93% of the total 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 the responses in this collection will take the public approximately 1 hour to complete. This includes the time to gather the necessary information, create the document, and submit the completed request to the USPTO. The USPTO calculates that, on balance, it takes the same amount of time to gather the necessary information, create the document, and submit it to the USPTO, whether the public submits the information on paper form or electronically.

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). Based on the Agency's long-standing institutional knowledge of and experience with the type of information collected, the Agency expects \$371 is an accurate estimate of the cost per hour to collect this information.

**Table 3: Burden Hours/Burden Costs to Respondents**

	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)
1	Petition to Restore the Right of Priority under 37 CFR 1.55(b)(2)	1.00	250	250	\$371.00	\$92,750.00
2	Petition to Restore the Benefit of a Prior-Filed Provisional Application under 37 CFR 1.78(a)(1)(ii)	1.00	250	250	\$371.00	\$92,750.00
	<b>Totals</b>	-----	<b>500</b>	<b>500</b>	-----	<b>\$185,500.00</b>

### 13. Total Annual (Non-hour) Cost Burden

The total annual (non-hour) respondent cost burden for this collection is calculated in Table 4 below. This collection has no capital start-up, maintenance, or record keeping costs.

#### Fees

For both petitions in this collection, a grantable petition requires the petition fee as set forth in 37 CFR 1.17(m). The notice of proposed rulemaking states that for small entities, the 37 CFR 1.17(m) fee will be \$850, and the undiscounted 37 CFR 1.17(m) fee will be \$1,700. The notice of proposed rulemaking does not provide for a micro entity discount for the 37 CFR 1.17(m) fee.

Postage

The USPTO estimates that the average postage cost for a paper submission will be \$5.60 (USPS Priority Mail, flat rate envelope) and that 35 submissions will be mailed to the USPTO per year.

**Table 4: Annual (Non-Hour) Cost Burden**

Type of Cost	Estimated Annual Responses	Amount	Totals
Grantable Petition to Restore the Right of Priority under 37 CFR 1.55(b)(2)	187	\$1,700.00	\$317,900.00
Grantable Petition to Restore the Right of Priority under 37 CFR 1.55(b)(2) (small entity)	63	\$850.00	\$53,550.00
Grantable Petition to Restore the Benefit of a Prior-Filed Provisional Application under 37 CFR 1.78(a)(1)(ii)	187	\$1,700.00	\$317,900.00
Grantable Petition to Restore the Benefit of a Prior-Filed Provisional Application under 37 CFR 1.78(a)(1)(ii) (small entity)	63	\$850.00	\$53,550.00
<b>Total Fees</b>	-----	-----	<b>\$742,900.00</b>
Postage	35	\$5.60	\$196.00
<b>Total Postage</b>	-----	-----	<b>\$196.00</b>
<b>Total Annual (Non-hour) Cost Burden</b>	-----	-----	<b>\$743,096.00</b>

**14. Annual Cost to the Federal Government**

The USPTO estimates that it takes a GS-7, step 1, employee approximately 18 minutes (0.3 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 with \$6.07 added for benefits and overhead).

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

**Table 5: Burden Hours/Burden Costs to the Federal Government**

	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)
1	Petition to Restore the Right of Priority under 37 CFR 1.55(b)(2)	0.3	250	75	\$26.29	\$1,972.00
2	Petition to Restore the Benefit of a Prior-Filed Provisional Application under 37 CFR 1.78(a)(1)(ii)	0.3	250	75	\$26.29	\$1,972.00
	<b>Totals</b>	-----	<b>500</b>	<b>150</b>	-----	<b>\$3,944.00</b>

**15. Reason for Changes in Annual Burden**

The USPTO is submitting this information collection request in support of a rulemaking titled “Changes to Implement the Patent Law Treaty” (RIN 0651-AC85). The USPTO proposes changes to the rules of practice for consistency with the changes in the PLT and title II of the PLTIA. The information to be collected is a direct result of the new statute.

The USPTO estimates that it will receive 500 responses for this collection annually and that the associated burden will be 500 hours per year. **Therefore, an additional 500 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 \$743,096 per year. **Therefore, an additional \$743,096 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.