

SUPPORTING STATEMENT
United States Patent and Trademark Office
Identification of Attributable Owner
OMB CONTROL NUMBER 0651-00xx
(December 12, 2013)

A. JUSTIFICATION

1. Necessity of Information Collection

Facilitating greater transparency of patent application and patent ownership is an important part of the United States Patent and Trademark Office's ongoing efforts to modernize patent examination and to improve patent quality. Recent changes in title 35 under the Leahy-Smith America Invents Act, Pub. L. 112-29 (2011) ("AIA") have expanded the role of ownership as part of determining what constitutes prior art. See 35 U.S.C. § 102(b). In particular, AIA 35 U.S.C. § 102(b)(2)(C) exempts as prior art those patent applications or issued patents that name different inventors where "the subject matter disclosed and the claimed invention, not later than the effective filing date of the claimed invention, were owned by the same person or subject to an obligation of assignment to the same person." Because ownership of an earlier-filed patent application or issued patent may prevent its use as prior art against a later-filed patent application, patentability may depend not just on the content of the prior art patent application or issued patent, but also on who owns it.

The USPTO published a notice of proposed rulemaking titled "Changes to Require Identification of Attributable Owner" (RIN 0651-AC90) in the *Federal Register*. In the notice, the USPTO proposed changes to the rules of practice to facilitate the examination of patent applications and to provide greater transparency concerning the ownership of pending patent applications and patents. This initiative is one of a number of executive actions issued by the Administration that are designed to ensure the highest-quality patents, enhance competition by providing the public with more complete information about the competitive environment in which innovators operate, improve the market efficiency for patent rights by making patent ownership information more readily and easily available, reduce abusive patent litigation by helping the public defend itself against frivolous litigation, and level the playing field for innovators.

The rulemaking proposes to require that patent applicants identify the attributable owner or owners when an application is filed (or shortly thereafter) when the attributable owner changes during the pendency of an application (within three months of such change), and when the issue fee is due for an application that has been allowed. This rulemaking also proposes to require that patent holders identify the attributable owner or owners when a maintenance fee is due, and when a patent becomes involved in certain post-issuance proceedings at the Office, including in supplemental examination, ex parte reexamination, or a trial proceeding before the Patent Trial and Appeal Board

(PTAB).

The USPTO proposes collecting two basic types of attributable owner information: (1) titleholders and (2) enforcement entities. If applicable, the attributable owner would also include the ultimate parent entity as defined in 16 CFR 801.1(a)(3) of either of these two reporting categories. The Office proposes adopting this “ultimate parent entity” definition rather than creating a new one to minimize the need for additional investigation and analysis of ownership structures. The Office also proposes that “attributable owner” include any entity that creates or uses any type of arrangement or device with the purpose or effect of temporarily divesting such entity of attributable ownership or preventing the vesting of such attributable ownership.

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.

2. Needs and Uses

This information collection is necessary in order to provide the USPTO and the public with up-to-date information concerning the attributable owner of a patent or patent application. The USPTO will use the information collected to facilitate patent examination and other parts of the USPTO’s internal processes, by helping to: (1) ensure that a “power of attorney” is current in each application or proceeding before the USPTO; (2) avoid potential conflicts of interest for USPTO personnel; (3) determine the scope of prior art under the common ownership exception under 35 U.S.C. § 102(b)(2) (C) and uncover instances of double patenting; (4) verify that the party making a request for a post-issuance proceeding is a proper party for the proceeding; and (5) ensure that the information the USPTO provides to the public concerning published applications and issued patents is accurate and not misleading.

1The 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 #	Form and Function	Statute	Rule	Form #	Needs and Uses
1	Identification of Attributable Owner	35 U.S.C. § 2.2(b)(2)	37 CFR 1.271, 1.273, 1.275, 1.277, 1.381, 1.383, and 1.385	No Form	<ul style="list-style-type: none">Used by patent applicants and patent owners to provide the USPTO and the public with up-to-date information concerning the attributable owner of a patent or patent application.Used by the USPTO to facilitate examination.
2	Petition to correct failure to notify the USPTO of a change to the attributable owner and errors in notice of attributable owner	35 U.S.C. § 2.2(b)(2)	37 CFR 1.279 and 1.387	No Form	<ul style="list-style-type: none">Used by patent applicants and patent owners to correct a good faith failure to notify the USPTO of a change to the attributable owner, or to correct a good faith but incorrect or incomplete indication of the attributable owner.Used by the USPTO to facilitate examination.

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 facilitate the examination of patents and to provide greater transparency concerning the ownership of pending patent applications and patents. The specific information proposed to be collected 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.

Pursuant to section 10(b) of the Leahy-Smith America Invents Act (AIA), the USPTO provides a 50% reduction in the fees for certain patent filings by small entity applicants, such as independent inventors, small businesses, and nonprofit organizations who meet the definition of a small entity provided at 37 CFR 1.27. Also pursuant to section 10(b) of the AIA, the USPTO provides a 75% reduction in the fees set or adjusted under section 10(a) of the Act for certain patent filings by applicants who meet the definition of a micro entity provided at 35 U.S.C. § 123 and 37 CFR 1.29.

The only fee associated with this collection is the fee for the Petition to correct failure to notify the USPTO of a change to the attributable owner and errors in notice of attributable owner, for which small and micro entity discounts are attributable. No significant burden is placed on small or micro entities to take advantage of these discounts, in that small entities must only identify themselves as such in order to obtain these benefits, and micro entities must only provide a certification of micro entity status. An assertion or certification of small or micro entity status, respectively, only needs to be filed once in an application or patent (although a fee may be paid in the micro entity amount only if the applicant or patentee is still entitled to micro entity status on the date the fee is paid).

6. Consequences of Less Frequent Collection

The information in this collection is collected during the pendency of a patent application and at specified times during the life of a patent. Less frequent collection of this information would hinder the examination of patent applications and provide less than optimal transparency concerning the ownership of pending patent applications and patents. 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 Require Identification of Attributable Owner” (RIN 0651-AC90) in the *Federal Register* and is seeking comments from the public on the notice of proposed rulemaking. Further, in order to engage the public and provide as much opportunity for feedback and input as possible, the USPTO intends to hold two stakeholder input meetings at which members of the public can provide comment to the USPTO on this proposal. These meetings will be held during the public comment period for this proposal, at times and locations to be determined. The USPTO will publicize the times and locations of these meetings through the Office’s Internet Web site (<http://www.uspto.gov>). The USPTO will consider any comments received 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 2 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 1,116,300 responses per year for this collection, with approximately 25% of these responses submitted by small entities. Approximately 93% (1,038,159) 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 it will take the public, on average, approximately 6 minutes (0.1 hour) to identify the attributable owner in an application or patent and approximately 1 hour to correct a good faith failure to notify the Office of a change to the attributable owner (or to correct a good faith but incorrect or

incomplete indication of attributable owner). 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 in 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 \$389 per hour for respondent cost burden calculations, which is the mean rate for attorneys in private firms as shown in the 2013 *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 \$389 is an accurate estimate of the cost per hour to collect this information.

Table 2: Burden Hours/Burden Costs to Respondents

Item #	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	Identification of Attributable Owner	0.1	1,037,973	103,797	\$389.00	\$40,377,033.00
1	Identification of Attributable Owner (paper)	0.1	78,127	7,813	\$389.00	\$3,039,257.00
2	Petition to correct failure to notify the USPTO of a change to the attributable owner and errors in notice of attributable owner	1.0	186	186	\$389.00	\$72,354.00
2	Petition to correct failure to notify the USPTO of a change to the attributable owner and errors in notice of attributable owner (paper)	1.0	14	14	\$389.00	\$5,446.00
	Totals	-----	0	0	-----	0

13. Total Annual (Non-hour) Cost Burden

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

Fees

The petition in this collection requires the petition fee as set forth in 37 CFR 1.17(g). The notice of proposed rulemaking states that the 37 CFR 1.17(g) fee will be \$100 for small entities and \$50 for micro entities. The undiscounted 37 CFR 1.17(g) fee will be \$200. The Identification of Attributable Owner does not require a fee.

Postage

The USPTO estimates that the average postage cost for a paper submission will be \$0.46 (USPS standard 1 ounce letter envelope) and that approximately 7% of the submissions will be mailed to the USPTO per year.

Table 3: Annual (Non-Hour) Cost Burden

Item #	Type of Cost	Estimated Annual Responses	Amount	Totals
	FEES			
1	Identification of Attributable Owner	1,037,937	\$0.00	\$0.00
1	Identification of Attributable Owner (paper)	78,127	\$0.00	\$0.00
2	Petition to correct failure to notify the USPTO of a change to the attributable owner and errors in notice of attributable owner (undiscounted)	140	\$200.00	\$28,000.00
2	Petition to correct failure to notify the USPTO of a change to the attributable owner and errors in notice of attributable owner (undiscounted) (paper)	10	\$200.00	\$2,000.00
2	Petition to correct failure to notify the USPTO of a change to the attributable owner and errors in notice of attributable owner (small entity)	37	\$100.00	\$3,700.00
2	Petition to correct failure to notify the USPTO of a change to the attributable owner and errors in notice of attributable owner (small entity) (paper)	3	\$100.00	\$300.00
2	Petition to correct failure to notify the USPTO of a change to the attributable owner and errors in notice of attributable owner (micro entity)	9	\$50.00	\$450.00
2	Petition to correct failure to notify the USPTO of a change to the attributable owner and errors in notice of attributable owner (micro entity) (paper)	1	\$50.00	\$50.00
	Total Fees	-----	-----	0
	POSTAGE COSTS			

Item #	Type of Cost	Estimated Annual Responses	Amount	Totals
1	Identification of Attributable Owner	78,127	\$0.46	\$35,938.00
2	Petition to correct failure to notify the USPTO of a change to the attributable owner and errors in notice of attributable owner	14	\$0.46	\$6.00
	Total Postage	-----	-----	\$35,944.00
	Total Annual (Non-hour) Cost Burden	-----	-----	\$70,444.00

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

Table 4: 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	Identification of Attributable Owner	0.3	1,116,100	334,830	\$26.29	\$8,802,681.00
2	Petition to correct failure to notify the USPTO of a change to the attributable owner and errors in notice of attributable owner	0.3	200	60	\$26.29	\$1,577.00
	Totals	-----	0	0	-----	0

15. Reason for Changes in Annual Burden

The USPTO is submitting this information collection request in support of a rulemaking titled "Changes to Require Identification of Attributable Owner" (RIN 0651-AC90). The USPTO proposes changes to the rules of practice to facilitate the examination of patent

applications and to provide greater transparency concerning the ownership of pending patent applications and patents.

The USPTO estimates that it will receive 1,116,300 responses for this collection annually and that the associated burden will be 111,810 hours per year. **Therefore, an additional 111,810 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 filing fees and postage costs associated with this information collection, which amounts to \$70,444 per year. **Therefore, an additional \$70,444 per year in 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.