

SUPPORTING STATEMENT
United States Patent and Trademark Office
Post Registration (Trademark Processing)
OMB Control Number 0651-0055

A. JUSTIFICATION

1. Necessity of Information Collection

This collection of information is required by the Trademark Act, 15 U.S.C. § 1051 *et seq.*, which provides for the registration of trademarks, service marks, collective trademarks and collective service marks, collective membership marks, and certification marks. Individuals and businesses that use or intend to use such marks in commerce may file an application to register their marks with the United States Patent and Trademark Office (USPTO).

Such individuals and businesses may also submit various communications to the USPTO, including requests to correct or amend their registrations. Registered marks remain on the register for ten years and can be renewed, but will be cancelled unless the owner files with the USPTO a declaration attesting to the continued use (or excusable non-use) of the mark in commerce within specific deadlines. Applicants may also surrender a registration and, in limited situations, petition the Director to reinstate a registration that has expired or been cancelled.

This information collection request is being submitted in support of a notice of proposed rulemaking titled “Reduction of Fees for Trademark Applications and Renewals” (RIN 0651-AC94). The USPTO is submitting this revision to the currently approved collection to account for the reduced filing fees for applications for renewal of a registration filed through the Trademark Electronic Application System (TEAS). The USPTO proposes, *inter alia*, to revise the Trademark Rules of Practice (37 CFR Part 2) to reduce the filing fees for applications for renewal of a registration filed through TEAS.

Table 1 identifies the statutes and rules that necessitate or require the USPTO to collect the information needed to process trademark renewal applications.

Table 1: Information Requirements for Proposed Revision to Post Registration (Trademark Processing)

Requirement	Statute	Rule
Combined Declaration of Use and/or Excusable Nonuse/Application for Renewal under Sections 8 & 9	15 U.S.C. §§ 1058 and 1059	37 CFR Part 2, 2.166, 2.168, 2.182, 2.183, and 2.185

2. Needs and Uses

The USPTO uses the information described in this collection to process post-registration submissions. The information in this collection is a matter of public record and is used by the public for a variety of private business purposes related to establishing and enforcing trademark rights. The information is available at USPTO facilities and can also be accessed at the USPTO's website. Additionally, the USPTO provides the information to other entities, including Patent and Trademark Resource Centers (PTRCs). The PTRCs maintain the information for use by the public.

The information in this collection can be submitted through PTO Form 1963 either in paper format or electronically through TEAS.

This proposed collection of information will result in information that will be collected, maintained, and used in a way consistent with all applicable Information Quality Guidelines. The information obtained through this collection will be maintained and used in accordance applicable information quality guidelines, *i.e.*, OMB and specific operating unit guidelines. 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.

Table 2 lists the information identified in this collection and explains how this information is used by the public and by the USPTO:

Table 2: Needs and Uses of Post Registration (Trademark Processing)

Form and Function	Form #	Needs and Uses
Combined Declaration of Use and/or Excusable Nonuse/Application for Renewal under Sections 8 & 9	PTO Form 1963 (Paper Version)	<ul style="list-style-type: none"> • Used by the public to complete and file declarations of use or excusable non-use in commerce of a registered mark, and to file applications for renewal of the registration. • Used by the USPTO to process declarations of use or excusable non-use in commerce of a registered mark, and to process applications for renewal of the registration.
TEAS Combined Declaration of Use and/or Excusable Nonuse/Application for Renewal under Sections 8 & 9	PTO Form 1963 (Electronic Version)	<ul style="list-style-type: none"> • Used by the public to complete and file declarations of use or excusable non-use in commerce of a registered mark, and to file applications for renewal of the registration. • Used by the USPTO to process declarations of use or excusable non-use in commerce of a registered mark, and to process applications for renewal of the registration.

3. Use of Information Technology

The USPTO currently offers four IT systems in support of this collection that are accessible through the online Trademark Electronic Business Center (TEBC). The TEBC provides descriptions of the systems, and the systems feature online “help” programs. Thus, the USPTO offers the public a single source for a variety of IT systems useful both for making submissions to the USPTO and for tracking the status of these submissions.

The USPTO provides online electronic forms through a web-accessible electronic application system (i.e., TEAS). Electronic forms can only be submitted via TEAS; filers may not e-mail their own forms to the USPTO. Once completed, TEAS forms are transmitted to the USPTO via the Internet. The TEAS forms include “help” instructions, as well as a “Form Wizard” that tailors the form to the particular characteristics of the application or registration in question, based on responses provided by the user to questions posed by the “Wizard.” The forms filed are received within seconds after transmission, and a confirmation of filing is immediately issued via e-mail to the user. TEAS improves the efficiency of the application process by providing users with less burdensome alternatives to paper forms and also reduces the processing time for the forms.

In addition, the TEAS Global Forms are an interim workaround as the USPTO develops TEAS forms for items that are currently collected only in paper. A Global Form allows the user to submit documents electronically by identifying a document type through a drop-down list, entering text in a free-text box, and attaching files in JPG or PDF format. This method allows for electronic filing of documents for which there is not currently a TEAS form with dedicated data fields.

In addition to providing a system that allows the electronic transmission of trademark submissions, the USPTO also provides the public with online access to various trademark records.

The USPTO maintains an online image database, called the Trademark Status and Document Retrieval (TSDR) system, which includes images of each of the documents that make up the “electronic file wrapper” of a trademark application or registration, and also provides users with information regarding the status of trademark applications and registrations. The data in the TSDR system is updated daily.

The USPTO provides a web-based record of registered marks, and marks for which applications for registration have been submitted, called the Trademark Electronic Search System (TESS). TESS can be used by potential applicants for trademark registration to assist in the determination of whether a particular mark may be available. The data in TESS is identical to the data reviewed by examining attorneys at the USPTO in their determination of whether marks for which registration is sought are confusingly similar to marks in existing registrations or to marks in pending applications for registration. TESS allows the user to choose from four different search tools, is updated daily, and is easy to use.

The Trademark Reporting and Monitoring (TRAM) system is also maintained by the USPTO. This system is an internal USPTO database only and provides support to all facets of Trademark operations, from the receipt of a new application in the USPTO, through processing and examination of the application, and into the post-registration activities required to maintain registered trademarks. Bibliographic data in TRAM for pending applications and active registrations is updated in real time. The TRAM system maintains current location and status information on applications and registrations,

enabling the USPTO to promptly determine the status of any file and to locate files. Data is received in an electronic format that permits expedited transfer to TRAM, thereby reducing processing steps and improving the reliability and quality of the data that is transferred.

4. Efforts to Identify Duplication

This collection does not solicit any data already available at the USPTO. This collection does not create a duplication of effort.

5. Minimizing the Burden to Small Entities

Since registration of a trademark/service mark is a voluntary activity on the part of the public, the USPTO has not collected data to determine if this collection of information impacts small businesses or other small entities.

6. Consequences of Less Frequent Collection

Less frequent collection of this information is not possible, since the information is collected only when voluntarily submitted by the public. Failure to collect this information would leave trademark owners without the measure of certainty which a Federal registration can provide and the public would not have access to a Federal register of trademarks. The information could not be collected less frequently. If the collection of information were not conducted, the USPTO could not comply with the requirements of the Trademark Act, 15 U.S.C. § 1051 and 37 CFR Part 2.

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 USPTO published a notice of proposed rulemaking titled "Reduction of Fees for Trademark Applications and Renewals" (RIN 0651-AC94) in the *Federal Register* and is seeking comments from the public on the notice of proposed rulemaking. Any comments received in response to the notice will be considered in the development of the final rule.

In addition, several large and well-organized bar associations frequently communicate their views to the USPTO. Also, the Trademark Public Advisory Committee (TPAC) was created by the American Inventors Protection Act of 1999 to advise the Director of the USPTO on the agency's operations, including its goals, performance, budget, and user fees. The TPAC includes nine voting members who are appointed by and serve at the pleasure of the Secretary of Commerce. The statute also provides non-voting membership on the Committee for the agency's three recognized unions. Members include inventors, lawyers, corporate executives, entrepreneurs, and academicians with significant experience in management, finance, science, technology, labor relations, and

intellectual property issues. The members of the TPAC reflect the broad array of USPTO's stakeholders and embrace the USPTO's e-government initiative. This diversity of interests is an effective tool in helping the USPTO nurture and protect the intellectual property that is the underpinning of America's strong economy. The Director consulted with TPAC and thereafter determined that it is advisable to propose such reductions in order to incentivize electronic communications and thereby increase efficiency.

Prior to consulting with TPAC, The USPTO published a notice of inquiry in the Federal Register on August 16, 2012 to provide the public, including trademark user groups, with an opportunity to comment on possible adjustments to the trademark application fees (77 Fed Reg. 49426). After reviewing the comments received, the USPTO is, *inter alia*, proposing to reduce the filing fee for TEAS applications for renewal of a registration.

9. Payment or Gifts to Respondents

This information collection does not involve a payment or gift to any respondent. Response to this information collection is necessary for registration of a trademark or service mark.

10. Assurance of Confidentiality

Trademark applications are open to public inspection. Confidentiality is not required in the processing of trademark applications.

11. Justification for Sensitive Questions

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

12. Estimate of Hour and Cost Burden to Respondents

The anticipated burden hours and costs of this information collection to the public are based on the Agency's long-standing institutional knowledge of and experience with the type of information collected by these items.

- **Response Calculation Factors**

The USPTO estimates that it will receive 51,929 responses annually, with 50,994 renewal applications filed electronically. The USPTO does not collect data to determine how many renewal applications are filed by small entities.

- **Burden Hour Calculation Factors**

The USPTO estimates that it takes the public approximately 12 to 14 minutes (0.20 to 0.23 hours) to complete this information, depending on the renewal application. This includes the time to gather the necessary information, prepare the renewal application, and submit the completed request to the USPTO. The

time estimates shown for the electronic forms in this collection are based on the average amount of time needed to complete and electronically file the associated form.

- **Hourly Cost Burden Calculation Factors**

The USPTO believes that attorneys will complete these applications. The USPTO uses a professional rate of \$389 per hour for respondent cost burden calculations, which is the median 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).

Table 3a illustrates the anticipated burden hours and costs of this information collection to the public.

Table 3a: Burden Hour/Burden Cost to Post Registration (Trademark Processing)

Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a) x (b)	Rate (\$/hr) (d)	Total Cost (\$/hr) (e) (c) x (d)
Combined Declaration of Use and/or Excusable Nonuse/Application for Renewal under Sections 8 & 9	0.23	935	215	\$389	\$83,635
TEAS Combined Declaration of Use and/or Excusable Nonuse/Application for Renewal under Sections 8 & 9	0.20	50,994	10,199	\$389	\$3,967,411
Total	---	51,929	10,414	---	\$4,050,988

13. Total Annualized Cost Burden

An application for renewal of a registration must include a fee for each class of goods and services. Therefore, the total filing fees associated with this collection can vary depending on the number of classes in each registration. Because the deadlines for filing renewal applications under §9 of the Trademark Act (15 U.S.C. §1059) coincide with the deadlines for filing affidavits or declarations of use or excusable nonuse under §8 (15 U.S.C. §1058(a)(2)) at the end of each ten-year period following the date of registration, the USPTO created the “Combined Declaration of Use and/or Excusable Nonuse/Application for Renewal under Sections 8 & 9” (“combined filing”) for filing a §8 affidavit or declaration with a §9 renewal application.

The proposed reduction applies only to the §9 renewal fee. The fee per class for a §8 affidavit or declaration is \$100. Therefore, the filing fees shown in Table 4b are the minimum fees associated with the combined filing. The current per-class fees for an application for renewal are \$400. With this rule-making adjustment, the USPTO is now proposing to reduce the filing fee for TEAS applications for renewal to \$300 per class.

Table 4a: Filing Fees – Non-hour Cost Burden for Post Registration (Trademark Processing)

Item	Responses (yr) (a)	Filing fee* (\$) (b)	Total Non-Hour Cost Burden (yr) (a) x (b) (c)
Combined Declaration of Use and/or Excusable Nonuse/Application for Renewal under Sections 8 & 9	935	\$500.00	\$467,500
TEAS Combined Declaration of Use and/or Excusable Nonuse/Application for Renewal under Sections 8 & 9	50,994	\$400.00	\$20,397,600
Total	51,929	---	\$20,865,100

Due to the reduced filing fee for TEAS applications for renewal, the USPTO estimates that fewer applications will be submitted by mail through the United States Postal Service. The USPTO still estimates that approximately 98% of the paper forms are submitted via first-class mail, but now estimates that out of 935 paper forms, 917 forms will be mailed.

Since the renewal of this collection in 2011, the first-class postage rates have increased from 46 cents to 49 cents. Therefore, the USPTO estimates that the postage costs for this collection will be \$450.

Table 4b calculates the postage costs for the combined filing submitted on paper.

Table 4b: Postage Costs for Post Registration (Trademark Processing)

Item	Responses (yr) (a)	Postage Costs (b)	Total Cost (yr) (a) x (b)
Combined Declaration of Use and/or Excusable Nonuse/Application for Renewal under Sections 8 & 9	917	\$0.49	\$450
Total	917	---	\$450

The USPTO estimates that the total non-hour cost burden associated with the filing and processing fees for this collection will be \$20,865,100.

Therefore, the USPTO estimates that the total annual (non-hour) cost burden for this collection, in the form of postage costs, filing fees, and processing fees is \$20,865,100per year.

14. Annual Cost to the Federal Government

The USPTO estimates that it takes a GS-7, step 9 employee 7 minutes (0.12 hours) to process the combined filing if submitted on paper. In the case of electronically filed combined filings, the USPTO estimates that it takes 4 minutes (0.07 hours) to process.

The current hourly rate for a GS-7, step 9 is \$25.62. When 30% is added to account for a fully loaded hourly rate (benefits and overhead), the rate per hour for a GS-7, step 9 is \$33.31 (\$25.62 + \$7.69).

Estimates are based upon agency long-standing institutional knowledge of and experience with processing the type of information collected and the length of time necessary to process similar or like information.

Table 5a calculates the processing hours and costs of this information collection to the Federal Government:

Table 5a: Burden Hour/Burden Cost to the Federal Government for Post Registration (Trademark Processing)

Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a) x (b)	Rate (\$/hr) (d)	Total Cost (\$/hr) (e) (c) x (d)
Combined Declaration of Use and/or Excusable Nonuse/Application for Renewal under Sections 8 & 9	0.12	935	113	\$33.31	\$3,765
TEAS Combined Declaration of Use and/or Excusable Nonuse/Application for Renewal under Sections 8 & 9	0.07	50,994	3,570	\$33.31	\$118,917
Total	---	51,929	3,683	---	\$122,682

15. Summary of Changes in Burden Since Previous Renewal

OMB previously approved this information collection on July 16, 2012, with 127,636 responses, 17,466 burden hours, and \$41,793,757 in annualized (non-hour) costs.

With this revision, the USPTO estimates that the number of annual responses for this collection will total 51,929 with a total of 10,414 burden hours and \$20,772,058 in annualized (non-hour) costs. The tables below show the difference between the burden estimates for this information collection as of July 16, 2012 and the revised burden estimates described in items 12 and 13 of the Supporting Statement. The tables also illustrate whether (and how much) the differences are attributable to rulemaking and/or non-rulemaking factors.

Table 6a shows the impact of the rulemaking and non-rulemaking changes to the burden estimates for this information collection:

Table 6a: Annual Burden Hour/Burden Cost Changes – Rulemaking/Non-Rulemaking Impact

	Current Inventory	Rulemaking Impact	Non-rule Impact	New Proposed Burden Estimate
Responses	39,816	0	12,113	51,929

Burden Hours	8,045	0	2,369	10,414
Respondent Cost Burden	\$2,735,300	0	\$1,315,668	\$4,050,988

The USPTO estimates that the notice of proposed rulemaking, “Reduction of Fees for Trademark Applications and Renewals” (RIN 0651-AC94) will impact the annual (non-hour) costs associated with this collection. The USPTO estimates that the postage costs as well as the filing and processing fees will be impacted. This collection has no capital start-up or recordkeeping costs.

Table 6b shows the impact of the rulemaking and non-rulemaking changes to the annual (non-hour) cost burden estimates for this information collection:

Table 6b: Annual (Non-Hour) Cost Burden Changes – Rulemaking/Non-Rulemaking Impact

	Current Inventory	Rulemaking Impact	Non-rule Impact	New Proposed Burden Estimate
Filing Fees	\$19,908,000	0	\$957,100	\$20,865,100
Postage	\$1,137	0	(\$687)	\$450
Total Annual (Non-hour) Cost Burden	\$19,909,137	0	\$956,413	\$20,865,550

Table 6c shows the impact of the rulemaking and non-rulemaking changes to the Federal Government burden estimates and cost burden for this collection:

Table 6c: Federal Government Burden Estimates/Processing Costs – Rulemaking/Non-Rulemaking Impact

	Current Inventory	Rulemaking Impact	Non-rule Impact	New Proposed Burden Estimate
Responses	39,816	0	12,113	51,929
Government Burden Hours	2,921	0	762	3,683
Government Cost Burden	\$87,091	0	\$35,591	\$122,682

16. Project Schedule

There is no plan to publish this information for statistical use.

17. Display of Expiration Date of OMB Approval

The forms in this information collection will display the OMB Control Number and the date on which OMB’s approval of this information collection expires.

18. Exception to the Certificate Statement

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

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection of information does not employ statistical methods.