

**SUPPORTING STATEMENT**  
**United States Patent and Trademark Office**  
**Fee Deficiency Submissions**  
**OMB CONTROL NUMBER 0651-0070**  
**July 2015**

**A. JUSTIFICATION**

**1. Necessity of Information Collection**

The Leahy-Smith America Invents Act (“Act”) was enacted into law on September 16, 2011. See Pub. L. 112-29, 125 Stat. 283 (2011). Under section 10(b) of the Act, eligible small entities shall receive a 50 percent fee reduction from the undiscounted fees for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents. The Act further provides that micro entities shall receive a 75 percent fee reduction from the undiscounted fees for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents.

This information collection covers the submissions made by patent applicants and patentees to excuse small and micro entity fee payment errors, in accordance with the procedures set forth in 37 CFR 1.28(c) and 1.29(k). Specifically, 37 CFR 1.28(c) provides a procedure by which patent applicants and patentees may be excused for erroneous payments of fees in the small entity amount. 37 CFR 1.29(k) provides a procedure by which patent applicants and patentees may be excused for erroneous payments of fees in the micro entity amount.

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, by either mail or hand delivery. The USPTO is therefore accounting for both electronic and paper submissions in this collection.

Table 1 provides the statutes and regulations authorizing the USPTO to collect the information:

**Table 1: Information Requirements for Fee Deficiency Submissions**

| <b>IC Number</b> | <b>Requirement</b>               | <b>Statute</b>    | <b>Rule</b> |
|------------------|----------------------------------|-------------------|-------------|
| <b>1</b>         | Submissions Under 37 CFR 1.28(c) | 35 U.S.C. § 41(h) | 37 CFR 1.28 |
| <b>2</b>         | Submissions Under 37 CFR 1.29(k) | 35 U.S.C. § 123   | 37 CFR 1.29 |

## 2. Needs and Uses

This information collection is necessary so that patent applicants and patentees may pay the balance of fees due (i.e., make a fee deficiency payment) when a fee was previously paid in error in a micro or small entity amount. The USPTO needs the information to be able to process and properly record a fee deficiency payment to avoid questions arising later either for the USPTO or for the applicant or patentee as to whether the proper fees have been paid in the application or patent.

The information collected, maintained and used in this collection is based on OMB and USPTO guidelines. This includes the basic information quality standards established in the Paperwork Reduction Act (44 U.S.C. Chapter 35), in OMB Circular A-130, and in the OMB information quality guidelines.

Table 2 outlines how this collection of information is used by the public and the USPTO:

**Table 2: Needs and Uses for Fee Deficiency Submissions**

| IC Number | Form and Function                | Form #  | Needs and Uses   |
|-----------|----------------------------------|---------|--|
| 1         | Submissions Under 37 CFR 1.28(c) | No Form | <ul style="list-style-type: none"><li>Used by patent applicants and patentees to pay the balance of fees due when a fee was previously paid in error in a small entity amount.</li><li>Used by the USPTO to process and properly record a fee deficiency payment to avoid questions arising later either for the USPTO or for the applicant or patentee as to whether the proper fees have been paid in the application or patent.</li></ul> |
| 2         | Submissions Under 37 CFR 1.29(k) | No Form | <ul style="list-style-type: none"><li>Used by patent applicants and patentees to pay the balance of fees due when a fee was previously paid in error in a micro entity amount.</li><li>Used by the USPTO to process and properly record a fee deficiency payment to avoid questions arising later either for the USPTO or for the applicant or patentee as to whether the proper fees have been paid in the application or patent.</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 to process and record a fee deficiency payment when a fee was previously paid in error in a micro or small entity amount. 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. 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 or patentee previously paid a fee in error in a micro or small entity amount. Less frequent collection of this information would impact the USPTO's ability to: (i) process and properly record a fee deficiency payment; and (ii) answer questions arising later either for the USPTO or for the applicant or patentee as to whether the proper fees have been paid in an application or patent. 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**

A 60-Day *Federal Register* Notice was published on March 20, 2015 (80 Fed. Reg. 14909). The comment period ended on May 19, 2015. No public comments were received.

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 and during the renewal of an information collection. No views have been expressed impacting the present renewal.

## **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 either filed in a published application or issued patent, or when it is filed in an application that is later published or issued 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 3,000 total responses per year for this collection. The respondents for this collection may be summarized as patent applicants and patentees who: (i) established their status as a small entity in error, or through error did not notify the USPTO of a loss of entitlement to small entity status; or (ii) established their status as a micro entity in error, or through error did not notify the USPTO of a loss of entitlement to micro entity status. Respondents (i) will necessarily be non-small entities. Respondents (ii) will either be non-small entities or small entities (the proposed rules require an applicant claiming micro entity status to certify that the applicant qualifies as a small entity). Therefore, a maximum of 750 (25%) of the responses collected annually will be filed by small entities.

Approximately 97% of the responses for this collection will be submitted electronically via EFS-Web.

- **Burden Hour Calculation Factors**

The USPTO estimates that it will take the public approximately 2 hours to submit the information in this collection, including the time to gather the necessary

information, prepare the appropriate form or petition, and submit the completed request to the USPTO.

- **Cost Burden Calculation Factors**

The USPTO uses a professional rate of \$389 per hour for the 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 American Intellectual Property Law Association (AIPLA).

**Table 3: Burden Hours/Burden Costs to Respondents for Fee Deficiency Submissions**

| IC Number | Item                             | Hours<br>(a) | Responses<br>(yr)<br>(b) | Burden<br>(hrs/yr)<br>(c)<br>(a) x (b) | Rate<br>(\$/hr)<br>(d) | Total Cost<br>(\$/yr)<br>(e)<br>(c) x (d) |
|-----------|----------------------------------|--------------|--------------------------|--|------------------------|---|
| 1         | Submissions Under 37 CFR 1.28(c) | 2.0          | 2,250                    | 4,500                                  | \$389.00               | \$1,750,500.00                            |
| 2         | Submissions Under 37 CFR 1.29(k) | 2.0          | 750                      | 1,500                                  | \$389.00               | \$583,500.00                              |
|           | <b>Totals</b>                    | -----        | <b>3,000</b>             | <b>6,000</b>                           | -----                  | <b>\$2,334,000.00</b>                     |

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

There are no capital start-up, maintenance, or record keeping costs for this collection, nor does this collection have filing fees. There is, however, a non-hour cost burden in the form of postage costs.

Customers may incur postage costs when submitting the information in this collection to the USPTO by mail through the United States Postal Service. The USPTO estimates that the average first class postage cost for a mailed one-pound submission will be \$5.75 and approximately 90 submissions will be submitted to the USPTO requiring postage.

**Table 4: Postage Costs for Fee Deficiency Submissions**

| IC Number | Item                             | Estimated Mailed Responses<br>(a) | Estimated Postage Rate<br>(b) | Total Postage Cost<br>(\$/yr)<br>(a) x (b) = (c) |
|-----------|----------------------------------|-----------------------------------|-------------------------------|--|
| 1         | Submissions Under 37 CFR 1.28(c) | 67                                | \$5.75                        | \$385.25   |
| 2         | Submissions Under 37 CFR 1.29(k) | 23                                | \$5.75                        | \$132.25   |
|           | <b>Totals</b>                    | <b>90</b>                         | -----                         | <b>\$517.50</b>                                  |

The estimated postage cost, and therefore the estimate annual (non-hour) cost burden for this collection, totals \$517.50.

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

The USPTO estimates that it takes a GS-7, step 1, employee approximately 15 minutes (0.25 hours) on average to process the items in this collection.

The hourly rate for a GS-7, step 1, employee is currently \$20.63 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 \$26.82 (\$20.63 + \$6.19).

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

**Table 5: Burden Hours/Burden Costs to the Federal Government for Fee Deficiency Submissions**

| IC Number | Item                             | Hours<br>(a) | Responses<br>(yr)<br>(b) | Burden<br>(hrs/yr)<br>(c)<br>(a x b) | Rate<br>(\$/hr)<br>(d) | Total Cost<br>(\$/yr)<br>(e)<br>(c x d) |
|-----------|----------------------------------|--------------|--------------------------|--------------------------------------|------------------------|---|
| 1         | Submissions Under 37 CFR 1.28(c) | 0.25         | 2,250                    | 562.50                               | \$26.82                | \$15,086.25                             |
| 2         | Submissions Under 37 CFR 1.29(k) | 0.25         | 750                      | 187.50                               | \$26.82                | \$5,028.75                              |
|           | <b>Totals</b>                    | -----        | <b>3,000</b>             | <b>750</b>                           | -----                  | <b>\$20,115.00</b>                      |

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

##### Changes from the 60-Day Federal Register Notice

Since the publication of the 60-day notice in the Federal Register, there has been a correction in the postage rate. The notice indicated that first-class postage costs \$5.60 for a one-pound submission. This has since been changed to \$5.75 to reflect the current rate. The ratio of mailed responses has also been adjusted; while this collection will still receive 90 mailed responses, the ratio has been adjusted so that IC Numbers 1 and 2 generate 75 percent and 25 percent, respectively, of the mailed responses rather than the 50-50 split published in the 60-day notice.

##### Change in Respondent Cost Burden

The total respondent cost burden for this collection has increased by \$108,000, from \$2,226,000 to \$2,334,000, from the previous renewal of this collection in May 2012, due to:

- **Increase in estimated hourly rates.** The 2012 renewal used an estimated rate of \$371 per hour for respondents to this collection. For the current renewal, the USPTO is using an updated rate of \$389 per hour for attorneys.

#### Changes in Annual (Non-hour) Costs

For this renewal, the USPTO estimates that the total annual (non-hour) costs will decrease by \$521.50 (from \$1,039 to \$517.50) due to administrative adjustments, as follows:

- **Decrease of \$521.50 in postage fees.** This collection is currently approved with a total of \$1,039 in postage costs associated with mailing responses to the USPTO. For this renewal, the USPTO estimates that the postage costs for mailed items will decrease due to a decline of 120 postal submissions, from 210 to 90, despite an increase in first-class postage rates from \$4.95 to \$5.75 per submission.

#### Changes in Federal Government Burden

For this renewal, the USPTO estimate that the annual burden to the Federal Government will increase by \$374.00, from to \$19,744.00 to \$20,118.00. This overall increase is due to the following:

- **Increase in GS Rates.** For this collection, the USPTO is using the 2015 GS Rate table (with locality pay for the Washington, D.C. area) to calculate the work done by Federal employees. The 2012 submission valued an hour of work from a GS-7, step 1, at \$26.29 (\$20.22 base hourly with an additional 30 percent added for benefits/overtime compensation). This submission, however, values those same positions at \$26.82 (\$20.63 base hourly with the 30 percent benefits/overtime compensation).
- **Decrease of 1 burden hour.** The previous version of this collection contained a mathematical error which incorrectly listed the annual number of burden hours imposed on the federal government as 751. This submission corrects that number to 750, and adjusts the total burden costs accordingly.

#### **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.