

SUPPORTING STATEMENT
United States Patent and Trademark Office
Invention Promoters/Promotion Firms Complaints
OMB CONTROL NUMBER 0651-0044
March 2016

A. JUSTIFICATION

1. Necessity of Information Collection

Under the Inventors' Rights Act of 1999 (Public Law 106-113, sec. 4101 *et seq.*), as found in 35 U.S.C. § 297 and implemented by 37 CFR Part 4, the United States Patent and Trademark Office (USPTO) is required to provide a forum for the publication of complaints concerning invention promoters and responses from the invention promoters to those complaints. An individual may submit a complaint concerning an invention promoter to the USPTO, which will forward the complaint to the invention promoter for response. The complaints and responses will be published and made available to the public on the USPTO Web site. The USPTO does not investigate these complaints or participate in any legal proceedings against invention promoters or promotion firms.

Congress enacted the Inventors' Rights Act to protect independent inventors from being defrauded by invention promoters and promotion firms. Invention promoters assist inventors, particularly independent inventors, with developing, financing, manufacturing, and marketing their inventions. However, some independent inventors were paying large sums of money to these firms but not receiving comparable services from them. The Inventors' Rights Act requires invention promoters to disclose certain information about their invention promotion services before entering into a contract with a customer.

Complaints submitted to the USPTO must identify the name and address of the complainant and the invention promoter or promotion firm, explain the basis for the complaint, and include the signature of the complainant. The identifying information is necessary so that the USPTO can forward the complaint to the invention promoter or promotion firm and also notify the complainant that the complaint has been forwarded. Complainants should understand that the complaints will be forwarded to the invention promoter for response and that the complaint and response will be made available to the public as required by the Inventors' Rights Act. If the USPTO does not receive a response from the invention promoter, the complaint will still be published without the response. The USPTO does not accept complaints under this program if the complainant requests confidentiality.

This information collection includes one form, Complaint Regarding Invention Promoter (PTO/SB/2048), which is used by the public to submit a complaint under this program. This form is available for download from the USPTO Web site. Use of this form is not mandatory as long as the complaint includes the necessary information and clearly marks their submission as a complaint filed under the Inventors' Rights Act. There is no associated form for submitting responses to the complaints.

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

Table 1: Information Requirements

| IC Number | Requirement | Statute | Rule |
|-----------|--|--|---------------|
| 1 | Complaint Regarding Invention Promoter | Inventors' Rights Act of 1999 (Public Law 106-113, sec. 4101 <i>et seq.</i>), 35 U.S.C. § 297 | 37 CFR Part 4 |
| 2 | Responses to the Complaints | Inventors' Rights Act of 1999 (Public Law 106-113, sec. 4101 <i>et seq.</i>), 35 U.S.C. § 297 | 37 CFR Part 4 |

2. Needs and Uses

The public uses this information collection to submit a complaint to the USPTO regarding an invention promoter or promotion firm. The USPTO requests responses from the subjects of the complaints as required by the Inventors' Rights Act of 1999 and then publishes the complaints and responses. To ensure that the public provides the minimum information necessary to process the complaint under this program, the USPTO provides a form that the public may use to submit a complaint. However, the USPTO is not required to enforce the provisions of the Inventors' Rights Act, investigate the complaints, or participate in any legal proceedings against the invention promoter.

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

Table 2: Needs and Uses of Information Collected

| IC Number | Form and Function | Form # | Needs and Uses |
|-----------|--|--------------------|---|
| 1 | Complaint Regarding Invention Promoter | PTO/SB/2048 | <ul style="list-style-type: none"> Used by the public to submit a complaint to the USPTO regarding an invention promoter or promotion firm. Used by the USPTO to ensure that all of the necessary information is provided for the complaint. Used by the USPTO to make the complaint publicly available and to forward complaints for response by the invention promoter or promotion firm named in the complaint. |
| 2 | Responses to the Complaints | No Form Associated | <ul style="list-style-type: none"> Used by the invention promoter or promotion firm to respond to a complaint. Used by the USPTO to make the response to the complaint publicly available. |

3. Use of Information Technology

1Currently, the USPTO does not use automated, electronic, mechanical, or other technologies to collect the complaints or responses to the complaints. The USPTO does offer a form for complaints that customers may download from the USPTO Web site. The complaint form may be filled out on the computer, printed, then mailed or faxed to the USPTO. Additionally, the complaints and responses to the complaints are published on the USPTO Web site.

The USPTO does not expect to receive a large number of complaints under this program. To help ensure the authenticity of complaints and responses to the complaints, the USPTO requires the signature of the person submitting the complaint or response. As the USPTO expands its electronic filing initiatives, if it becomes feasible to collect the complaint information electronically, the USPTO will submit the associated electronic forms to OMB for review as necessary.

4. Efforts to Identify Duplication

This information is collected only when a customer is dissatisfied with the services received from an invention promoter or promotion firm and voluntarily decides to file a complaint with the USPTO; it is not collected elsewhere. These rules do not cover complaints against registered attorneys or agents. Customers who have such complaints should file them under the existing USPTO guidelines for complaints concerning registered attorneys and agents, which are covered under OMB Control Number 0651-0017 (Practitioner Conduct and Discipline). Therefore, this collection does not result in a duplication of effort or collection of data.

5. Minimizing Burden to Small Entities

The USPTO believes that the complaints covered by this collection will primarily be submitted by independent inventors since they are the primary customers of invention promoters and promotion firms. The USPTO developed the minimum information requirements and the complaint form with this fact in mind. The USPTO believes that this collection of information does not impose a significant economic impact on small entities or small businesses. There is no fee for submitting or responding to a complaint, and all submissions are voluntary. The same information is required of every customer and is not available from any other source.

6. Consequences of Less Frequent Collection

Congress has directed the USPTO to collect and publish complaints regarding invention promoters and promotion firms, and the USPTO has implemented rules for this complaint program accordingly. Failure to collect and publish the voluntarily-submitted information would put the USPTO in violation of a statutory duty. This information is collected only when a customer of an invention promoter or promotion firm files a complaint against that entity with the USPTO and when the invention promoter responds to the complaint. This collection of information could not be conducted less frequently. If this information were not collected, the USPTO would not be able to publish complaints concerning invention promoters and their responses to the complaints as required by the Inventors' Rights Act of 1999.

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 60-Day Notice was published in the *Federal Register* on August 17, 2015 (80 FR 49214). The comment period ended on October 16, 2015. The USPTO received one comment that suggested legislative, disciplinary, and budgetary actions that could deter deceptive practices of invention marketing companies. Although outside the scope of this information collection, we acknowledge the commenter's suggested actions and will consider whether they are appropriate or feasible.

The USPTO has previously solicited and considered comments from the public in the process of drafting the rules of practice for accepting and publishing complaints under the Inventors' Rights Act of 1999. The USPTO publishes the complaints and responses on the USPTO website in order to make the information searchable and available to the public as quickly as possible.

The USPTO has long-standing relationships with groups from whom patent application data is collected, such as the American Intellectual Property Law Association, as well as patent bar associations, independent inventor groups, and users of our public facilities. Their views are expressed in regularly-scheduled meetings and considered when developing proposals for information collection requirements. There have been no comments or concerns expressed by these or similar organizations concerning the time required to provide the information under this program.

9. Payment or Gifts to Respondents

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

10. Assurance of Confidentiality

The Inventors' Rights Act of 1999 requires the USPTO to accept complaints against invention promoters and promotion firms and make those complaints available to the public. In addition, the Act requires the USPTO to forward copies of the complaints to the invention promoters so that the promoters can submit responses to the complaints, which are also published. Due to these requirements to forward and publish the complaints, the USPTO will not accept any complaints submitted under this Act that request that the complaint be kept confidential.

In order to publish a complaint, the USPTO must collect personal information from the complainant. If the complainant fails to provide all of the necessary information, the USPTO may not be able to publish the complaint and may even return the submission to the complainant. To process a complaint, the USPTO requests the complainant's name, address, and telephone number. These records may be retrieved by a personal identifier and include personal information that is subject to the Privacy Act of 1974. The complaint form includes a Privacy Act statement, and a system of records notice for this collection entitled "PAT/TM-15 System for Maintenance of Invention Promoter Complaints" was published in the *Federal Register* on April 25, 2000 (65 FR 24177).

The USPTO stores the records in file folders as well as on electronic storage media. The buildings where the information is kept are protected by security systems, and the records are stored in areas that only authorized personnel can access. These personnel are properly screened, cleared, and trained in security procedures. Systems allowing electronic access to the information utilize appropriate safeguards.

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 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 50 responses per year for this collection. The USPTO estimates that 100% of the Complaints and 0% of the Responses to the Complaints will come from small entities. None of the responses 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 approximately 15 minutes (0.25 hours) to gather the necessary information, prepare the complaint, and submit that complaint to the USPTO and approximately 30 minutes (0.5 hours) for an invention promoter or promotion firm to prepare and submit a response to a complaint.

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 paraprofessional rate of \$125 and a professional attorney rate of \$410 per hour for respondent cost burden calculations based on the 2015 *Report of the Economic Survey* published by the American Intellectual Property Law Association (AIPLA).

The USPTO expects that complaints will be prepared by paraprofessionals or independent inventors. Using the average of the estimated rate of \$46.32 per hour for independent inventors (as based on the 2014 Bureau of Labor Statistics mean hourly wage for "engineers, all other") and the paraprofessional rate of

\$125 per hour, the USPTO estimates that the average rate for preparing the complaints will be approximately \$85.66 per hour.

The USPTO expects that the responses to the complaints will be prepared by attorneys or invention promoters. Using the average of the professional rate of \$410 per hour for attorneys in private firms and the estimated rate of \$100 per hour for invention promoters, the USPTO estimates that the average rate for preparing the responses to the complaints will be approximately \$255.00 per hour.

Based on the Agency’s long-standing institutional knowledge of and experience with the type of information collected, the Agency believes the above figures are accurate estimates of the cost per hour to collect this information.

Table 3: Burden Hour/Burden Cost to Respondents

| IC Number | Information Collection Instrument | Estimated Response Time (Hours) (a) | Estimated Annual Responses (b) | Estimated Annual Burden Hours (a) x (b) = (c) | Rate (\$/hr) (d) | Estimated Total Cost (\$/yr) (c) x (d) = (e) |
|-----------|--|-------------------------------------|--------------------------------|---|------------------|--|
| 1 | Complaint Regarding Invention Promoter (PTO/SB/2048) | 0.25 | 30 | 7.5 | \$85.66 | \$642.45 |
| 2 | Responses to the Complaints | 0.50 | 20 | 10 | \$255.00 | \$2,550.00 |
| | Totals | ----- | 0 | 17.5 | ----- | \$3,192.45 |

13. Total Annual (Non-hour) Cost Burden

The total annual (non-hour) respondent cost burden for this collection is estimated to be approximately \$493.70 per year. This collection does not have a non-hour cost burden in the form of filing fees, processing fees, or maintenance costs. It does, however, have a non-hour cost burden in the form of postage costs.

The public may incur postage costs when submitting a complaint or a response to a complaint by mail to the USPTO. The USPTO estimates that the first-class postage cost for a mailed complaint will be 49 cents. Promotion firms may choose to send responses to complaints using overnight mail service at an estimated cost of \$23.95 per response. The USPTO estimates that the total postage cost associated with this collection will be approximately \$493.70 per year, as calculated in Table 4 below.

Table 4: Postage Costs for Respondents

| IC Number | Information Collection Instrument | Estimated annual mailed responses (a) | Estimated postage amount (b) | Estimated annual postage costs (a) x (b) = (c) |
|-----------|--|---------------------------------------|------------------------------|--|
| 1 | Complaint Regarding Invention Promoter (PTO/SB/2048) | 30 | \$0.49 | \$14.70 |

| | | | | |
|---------------|-----------------------------|----|---------|----------|
| 2 | Responses to the Complaints | 20 | \$23.95 | \$479.00 |
| Totals | | 0 | | 0 |

14. Annual Cost to the Federal Government

The USPTO estimates that it takes a GS-12, step 4 employee approximately 15 minutes (0.25 hours) to review a complaint regarding an invention promoter or a response to the complaint. The hourly rate for a GS-12, step 4 employee is currently \$40.26. When an additional 30% is added to account for benefits and overhead, the fully loaded rate for a GS-12, step 4 employee totals \$52.34. Preparing a complaint or a response for publication on the USPTO Web site takes approximately 1 hour, including converting the submission into the proper formats (text/HTML and PDF) and proofreading the file for accuracy. Complaints are converted and published by a GS-11, step 1 employee with an hourly rate of \$39.69 (\$30.53 plus an additional 30% to account for benefits and overhead). Therefore, the USPTO estimates that the total processing time is 1 hour and 15 minutes (1.25 hours) per submission, at a weighted average fully-loaded rate of \$42.22 per hour.

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

| Information Collection Instrument | Estimated Response Time (Hours) (a) | Estimated Annual Responses (b) | Estimated Annual Burden (hours) (a) x (b) = (c) | Rate (\$/hr) (d) | Total Cost (\$/yr) (c) x (d) = (e) |
|--|-------------------------------------|--------------------------------|---|------------------|------------------------------------|
| Complaints Regarding Invention Promoters (PTO/SB/2048) | 1.25 | 30 | 37.5 | \$42.22 | \$1,583.25 |
| Responses to the Complaints | 1.25 | 20 | 25 | \$42.22 | \$1,055.50 |
| Total | | 0 | 62.5 | | \$2,638.75 |

15. Summary of Changes in Burden

OMB previously approved this information collection in January 2013 with a total of 50 responses, 18 burden hours, and \$393.00 in annual (non-hour) costs. There have been no interim approvals.

For this renewal, the USPTO estimates that the total annual responses will be 50 and the total burden hours will be 17.5. The number of respondents is expected to remain the same, and the 0.5 hours decrease in total hourly burden comes from a more accurate calculation of total burden rather than an adjustment in any factors influencing hourly burden.

The total annual (non-hour) cost burden for this renewal of \$493.70 is an increase of \$100.70 from the currently approved total of \$393 in annual costs for this collection. This increase in annual costs is due to administrative adjustments.

Change in Respondent Cost Burden

The total respondent cost burden has increased by \$224.45, from \$2,968.00 to \$3,192.45, from the 2013 renewal of this collection, due to:

- **Increases in estimated hourly rates.** The 2013 renewal used estimated hourly rates for respondents that were based on previous estimates of \$122 per hour for paraprofessionals and \$371 per hour for attorneys. For the current renewal, the USPTO is using updated estimates of \$125 and \$410 per hour for paraprofessionals and attorneys, respectively, leading to an increase in the estimated average hourly rates for respondents in the current submission.

Changes in Responses and Burden Hours

Though the number of responses has remained the same, the burden hours have decreased by 0.5, from 18 to 17.5, due to:

- **Decrease of 0.5 hours in hourly burden.** The previous version of this collection rounded its hourly burden numbers to the nearest whole number, while this version elects not to round these numbers. As a result, though the time to complete a complaint and the number of responses are identical between those two versions, the hourly burden decreased by 0.5.

Changes in Annual (Non-hour) Costs

- **Increase of \$100.70 in postage costs.** For this renewal, the USPTO estimates that the total annual (non-hour) costs will increase by \$100.70 (from \$393 to \$493.70) due to an increase in the estimated postage cost per submission based on updated 2015 postage rates

Changes in Federal Government Cost Burden

Though the number of responses has remained the same, the burden hours to process this collection have decreased by 0.5, from 63 to 62.5, due to:

- **Decrease of 0.5 hours in federal hourly burden.** The previous version of this collection rounded its federal cost burden response hours to the nearest whole number, while this version elects not to round these numbers. As a result, though the time to process items in this collection has not changed, the federal hourly burden decreased by 0.5.

- **Increase in federal wage rates.** For this collection, the USPTO is using the 2015 GS wage table, which increases the salaries of the relevant employees.

16. Project Schedule

The USPTO does not plan to publish this information for statistical use. The USPTO is required by the Inventors' Rights Act of 1999 to make any complaints received concerning invention promoters or promotion firms and their responses to these complaints publicly available. The complaints and the responses to the complaints are published on the USPTO Inventor Resources Web page. If no response to a complaint is submitted, the complaint will still be published without a response.

17. Display of Expiration Date of OMB Approval

The form in this information collection will display the OMB Control Number and the expiration date of OMB approval.

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.