**JUSTIFICATION FOR NONMATERIAL/NONSUBSTANTIVE CHANGE**

**Post Registration (Trademark Processing)**

**OMB Control Number 0651-0055**

Background

The United States Patent and Trademark Office (USPTO) administers the Trademark Act, 15 U.S.C. § 1051 et seq., which provides for the Federal registration of trademarks, service marks, collective trademarks and 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 USPTO.

The request is to update the fees attached to this collection that are affected by the rulemaking NPRM 0651-AD08, and also to incorporate fees were not counted in previous approvals. Respondent numbers are also changing due to agency discretion in conjunction with the rule. There are 26 fees being added to this collection that were not previously counted.

The incorporation of these fees will affect the number of respondents for certain items, resulting in an increase in hourly burden and cost. These changes reflect the general shift and agency incentives towards electronic filing, and away from paper filing. The change in respondents and hourly burden are listed in Tables 1, 2, and 3 below.

**Table 1: Hourly Burden Respondent Increase**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **IC No.** | **Item** | **Current annual responses** | **Proposed Annual Responses** | **Increase in Responses** |
| **1** | Declaration of Use of Mark in Commerce Under Section 8 (TEAS) | 16,456 | 18,697 | 2,241 |
| **1** | Declaration of Use of Mark in Commerce Under Section 8 (Paper) | 336 | 79 | -257 |
| **2** | Combined Declaration of Use of Mark in Commerce and Application for Renewal of Registration of a Mark Under Section 8 & 9 (TEAS) | 75,902 | 89,775 | 13,873 |
| **2** | Combined Declaration of Use of Mark in Commerce and Application for Renewal of Registration of a Mark Under Section 8 & 9 (Paper) | 1,549 | 378 | -1,171 |
| **3** | Declaration of Incontestability of a Mark Under Section 15 (TEAS) | 823 | 1,529 | 706 |
| **3** | Declaration of Incontestability of a Mark Under Section 15 (paper) | 17 | 8 | -9 |
| **4** | Combined Declaration of Use and Incontestability Under Section 8 and 15 (TEAS) | 65,825 | 78,530 | 12,705 |
| **4** | Combined Declaration of Use and Incontestability Under Section 8 and 15 (Paper) | 1,343 | 331 | -1,012 |
|  | **Total** |  |  | **27,076** |

**Table 2: Burden Hour Increase**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **IC No.** | **Item** | **Current annual burden hours** | **Proposed Annual Burden Hours** | **Burden Hours Increase** |
| **1** | Declaration of Use of Mark in Commerce Under Section 8 (TEAS) | 3,291.20 | 3,739.40 | 448.20 |
| **1** | Declaration of Use of Mark in Commerce Under Section 8 (Paper) | 112.00 | 26.33 | -85.67 |
| **2** | Combined Declaration of Use of Mark in Commerce and Application for Renewal of Registration of a Mark Under Section 8 & 9 (TEAS) | 16,445.43 | 19,451.25 | 3,005.82 |
| **2** | Combined Declaration of Use of Mark in Commerce and Application for Renewal of Registration of a Mark Under Section 8 & 9 (Paper) | 516.33 | 126.00 | -390.33 |
| **3** | Declaration of Incontestability of a Mark Under Section 15 (TEAS) | 68.58 | 127.42 | 58.84 |
| **3** | Declaration of Incontestability of a Mark Under Section 15 (paper) | 2.83 | 1.33 | -1.50 |
| **4** | Combined Declaration of Use and Incontestability Under Section 8 and 15 (TEAS) | 13,165.00 | 15,706.00 | 2,541.00 |
| **4** | Combined Declaration of Use and Incontestability Under Section 8 and 15 (Paper) | 447.67 | 110.33 | -337.34 |
|  | **Total** |  |  | **5,239.02** |

**Table 3: Respondent Cost Increase**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **IC No.** | **Item** | **Current Total Cost ($)** | **Proposed Cost Total** | **Cost Total Increase** |
| **1** | Declaration of Use of Mark in Commerce Under Section 8 (TEAS) | $1,280,276.80 | $1,454,626.60 | $174,349.80 |
| **1** | Declaration of Use of Mark in Commerce Under Section 8 (Paper) | $43,568.00 | $10,242.37 | -$33,325.63 |
| **2** | Combined Declaration of Use of Mark in Commerce and Application for Renewal of Registration of a Mark Under Section 8 & 9 (TEAS) | $6,397,273.57 | $7,566,536.25 | $1,169,262.68 |
| **2** | Combined Declaration of Use of Mark in Commerce and Application for Renewal of Registration of a Mark Under Section 8 & 9 (Paper) | $200,853.67 | $49,014.00 | -$151,839.67 |
| **3** | Declaration of Incontestability of a Mark Under Section 15 (TEAS) | $26,678.92 | $49,566.38 | $22,887.46 |
| **3** | Declaration of Incontestability of a Mark Under Section 15 (paper) | $1,102.17 | $517.37 | -$584.80 |
| **4** | Combined Declaration of Use and Incontestability Under Section 8 and 15 (TEAS) | $5,121,185.00 | $6,109,634.00 | $988,449.00 |
| **4** | Combined Declaration of Use and Incontestability Under Section 8 and 15 (Paper) | $174,142.33 | $42,918.37 | -$131,223.96 |
|  | **Total** | --- | --- | **$2,037,974.88** |

The Fee Rule respondent estimates will also impact the number of non-hourly cost for some existing fees, which are listed in Table 4.

**Table 4: Non-hourly cost increase for existing fees**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **IC No.** | **Item** | **Current Total Cost ($)** | **Proposed Cost Total** | **Cost Total Increase** |
| **1** | Declaration of Use of Mark in Commerce Under Section 8 (TEAS) | $1,645,600.00 | $1,869,700.00 | $224,100.00 |
| **1** | Declaration of Use of Mark in Commerce Under Section 8 (Paper) | $33,600.00 | $7,900.00 | -$25,700.00 |
| **2** | Combined Declaration of Use of Mark in Commerce and Application for Renewal of Registration of a Mark Under Section 8 & 9 (TEAS) | $30,360,800.00 | $35,910,000.00 | $5,549,200.00 |
| **2** | Combined Declaration of Use of Mark in Commerce and Application for Renewal of Registration of a Mark Under Section 8 & 9 (Paper) | $774,500.00 | $189,000.00 | -$585,500.00 |
| **3** | Declaration of Incontestability of a Mark Under Section 15 (TEAS) | $164,600.00 | $305,800.00 | $141,200.00 |
| **3** | Declaration of Incontestability of a Mark Under Section 15 (paper) | $3,400.00 | $1,600.00 | -$1,800.00 |
| **4** | Combined Declaration of Use and Incontestability Under Section 8 and 15 (TEAS) | $19,747,500.00 | $23,559,000.00 | $3,811,500.00 |
| **4** | Combined Declaration of Use and Incontestability Under Section 8 and 15 (Paper) | $402,900.00 | $99,300.00 | -$303,600.00 |
|  | **Total** | --- | --- | **$8,809,400.00** |

The proposed 26 fees, along with their corresponding estimated responses and non-hourly burden are listed in the table below.

 **Table 5: Non-hour Burden for Proposed Fees**

|  |  |  |  |
| --- | --- | --- | --- |
| **Item** | **Proposed Respondents** | **Proposed Fee** | **Proposed Non-hour burden ($)** |
| Application for Renewal (Electronic) | 78,371 | $300 | $23,511,300 |
| Application for Renewal (Paper)  | 538 | $500 | $269,000 |
| Correcting a Deficiency in a Renewal Application (Electronic) | 97 | $100 | $9,700 |
| Correcting a Deficiency in a Renewal Application (Paper) | 3 | $200 | $600 |
| Filing Section 8 Affidavit (Electronic) | 169,282 | $150 | $25,392,300 |
| Filing Section 8 Affidavit (Paper) | 787 | $250 | $196,750 |
| Additional Fee for Filing a Section 8 Affidavit During the Grace Period (Electronic) | 17,688 | $100 | $1,768,800 |
| Additional Fee for Filing a Section 8 Affidavit During the Grace Period (Paper) | 82 | $200 | $16,400 |
| For Correcting a Deficiency in a Section 8 Affidavit (Electronic) | 1,128 | $100 | $112,800 |
| For Correcting a Deficiency in a Section 8 Affidavit (Paper) | 17 | $200 | $3,400 |
| Filing Section 15 Affidavit (Electronic) | 76,453 | $200 | $15,290,600 |
| Filing Section 15 Affidavit (Paper) | 357 | $300 | $107,100 |
| Filing to Publish a Mark Under Section 12(C) (Electronic) | 1 | $100 | $100 |
| Filing to Publish a Mark Under Section 12(C) (Paper) | 1 | $200 | $200 |
| Issuing New Certificate of Registration (Electronic)  | 2 | $100 | $200 |
| Issuing New Certificate of Registration (Paper) | 5 | $200 | $1,000 |
| Certificate of Correction, Registrant’s Error (Electronic) | 3,820 | $100 | $382,000 |
| Certificate of Correction, Registrant’s Error, Paper | 4 | $200 | $800 |
| Filing Disclaimer to Registration (Electronic) | 1 | $100 | $100 |
| Filing Disclaimer to Registration (Paper) | 1 | $200 | $200 |
| Filing Amendment to Registration (Electronic) | 67 | $100 | $6,700 |
| Filing Amendment to Registration (Paper) | 53 | $200 | $10,600 |
| Correcting a Deficiency in an Affidavit Under Section 71 of the Act (Electronic) | 1 | $100 | $100 |
| Correcting a Deficiency in an Affidavit Under Section 71 of the Act (Paper) | 1 | $200 | $200 |
| Additional Fee for Filing a Renewal During the Grace Period (Electronic) | 7,770 | $100 | $777,000 |
| Additional Fee for Filing a Renewal During the Grace Period (Paper) | 1 | $200 | $200 |
| **Totals** |  **356,531** | **---** | **$67,858,150** |

Summary of Changes

The addition of 26 fees, 383,607 in non-hourly and hourly responses, 5,239.02 burden hours, $2,037,974.88 in the hourly cost burden,and $131,060,068.33 in non-hourly costs to collection 0651-0055 account for the changes following the rulemaking action NPRM 0651-AD08.

Changes in Burden

|  |  |  |  |
| --- | --- | --- | --- |
| **Burden Type** | **Currently Approved** | **Proposed Change** | **New Estimate** |
| Respondents | 185,047 | 383,607 | 568,654 |
| Hourly Burden | 43,095.72 | 5,239.02 | 48,334.73 |
| Hourly Cost Burden | $16,764,233.78 | $2,037,974.88 | $18,802,208.66 |
| Non-hour costs | $54,392,518.33 | $76,667,550.00 | $131,060,068.33 |

The 0651-0055 revised total burden is as follows:

* 568,654 respondents
* 48,334.73 burden hours
* $18,802,208.66 hourly cost burden
* $131,060,068.33 in annual (non-hour) costs