**JUSTIFICATION FOR NONMATERIAL/NONSUBSTANTIVE CHANGE**

**Trademark Trial and Appeal Board (TTAB) Actions**

**OMB Control Number 0651-0040**

Background

This collection of information is required by the Trademark Act of 1946, Sections 13, 14, and 20, 15 U.S.C.1063, 1064, and 1070, respectively. Under the Trademark Act, any individual or entity that adopts a trademark or service mark to identify its goods or services may apply to federally register its mark. The mark will remain on the register for ten years and is renewable in ten-year increments. Section 14 of the Trademark Act allows individuals and entities to file a petition to cancel a registration of a mark, while Section 13 allows individuals and entities who believe that they would be damaged by the registration of a mark to file an opposition, or an extension of time to file an opposition, to the registration of a mark. Section 20 of the Trademark Act allows individuals and entities to file an appeal from any final decision of the Trademark Examining Attorney assigned to review an application for registration of a mark.

The United States Patent and Trademark Office (USPTO) administers the Trademark Act pursuant to 37 CFR Part 2, which contains the various rules that govern the filing of petitions to cancel the registration of a mark, notices of opposition to the registration of a mark, extensions of time to file an opposition, appeals, and other papers filed in connection with inter partes and ex parte proceedings.

These petitions, notices, extensions, and additional papers are filed with the Trademark Trial and Appeal Board (TTAB). The TTAB decides inter partes cases and ex parte appeals. The TTAB is an administrative tribunal empowered to determine the right to register as the issue may be presented in such cases. The Chief Administrative Trademark Judge and 20 administrative trademark judges decide proceedings filed with the TTAB. A panel of three judges decides each case when it is ready for final decision on the merits. The TTAB follows the Federal Rules of Civil Procedure when applicable, and the “Trademark Rules” in 37 CFR Part 2.

The request is to update fee prices for four fees add four new fees to this collection that are as part of the rulemaking NPRM 0651-AD08. Respondent numbers are also changing due to agency discretion in conjunction with the rule.

**Fee Increases**

|  |  |  |  |
| --- | --- | --- | --- |
| **Item** | **Currently Approved Fee** | **Proposed Fee** | **Fee Increase** |
| Filing a Petition to Cancel on Paper, per Class | $300 | $500 | $200 |
| Filing a Petition to Cancel through ESTTA, per Class | $300 | $400 | $100 |
| Filing a Notice of Opposition on Paper, per Class | $300 | $500 | $200 |
| Filing a Notice of Opposition through ESTTA, per Class | $300 | $400 | $100 |
| Ex Parte Appeal to the Trademark Trial and Appeal Board Filed on Paper, per Class  | $100 | $300 | $200 |
| Ex Parte Appeal to the Trademark Trial and Appeal Board Filed through ESTTA, per Class  | $100 | $200 | $100 |

**New Fees**

|  |  |  |
| --- | --- | --- |
| **Item** | **Proposed Respondents** | **Proposed Fee** |
| Filing a Request for an Extension of Time to File a Notice of Opposition under §2.102(c)(3) on Paper | 53 | $200 |
| Filing a Request for an Extension of Time to File a Notice of Opposition under §2.102(c)(3) through ESTTA | 5,263 | $100 |
| Filing a Request for an Extension of Time to File a Notice of Opposition under §2.102(c)(1)(ii) or (c)(2) on Paper | 124 | $300 |
| Filing a Request for an Extension of Time to File a Notice of Opposition under §2.102(c)(1)(ii) or (c)(2) through ESTTA under §2.102(c)(1)(ii) or (c)(2) through ESTTA | 12,280 | $200 |

**Respondent Total Increases**

|  |  |  |  |
| --- | --- | --- | --- |
| **Item** | **Currently Approved Estimate** | **Proposed Estimate** | **Respondent Increase** |
| Filing a Petition to Cancel on Paper, per Class | 77 | 24 | -53 |
| Filing a Petition to Cancel through ESTTA, per Class | 1,500 | 2,352 | 852 |
| Filing a Notice of Opposition on Paper, per Class | 140 | 88 | -52 |
| Filing a Notice of Opposition through ESTTA, per Class | 5,500 | 5,797 | 297 |
| Ex Parte Appeal to the Trademark Trial and Appeal Board Filed on Paper, per Class (Notice of Appeal) | 130 | 69 | -61 |
| Ex Parte Appeal to the Trademark Trial and Appeal Board Filed through ESTTA, per Class (Notice of Appeal) | 2,600 | 3,359 | 759 |
| Filing a Request for an Extension of Time to File a Notice of Opposition under §2.102(c)(1)(ii) or (c)(2) on Paper | 70\* (both fees apply to same IC line) | 124 | 107 |
| Filing a Request for an Extension of Time to File a Notice of Opposition under §2.102(c)(3) on Paper | 53 |
| Filing a Request for an Extension of Time to File a Notice of Opposition under §2.102(c)(1)(ii) or (c)(2) through ESTTA under §2.102(c)(1)(ii) or (c)(2) through ESTTA | 17,000\* (both fees apply to same IC line) | 12,280 | 543 |
| Filing a Request for an Extension of Time to File a Notice of Opposition under §2.102(c)(3) through ESTTA | 5,263 |
| **Totals** | **---** | **---** | **2,392** |

**Fee Total Increases**

|  |  |  |  |
| --- | --- | --- | --- |
| **Item** | **Currently Approved Estimate** | **Proposed Estimate** | **Respondent Increase** |
| Filing a Petition to Cancel on Paper, per Class | $23,100 | $12,000 | -$11,000 |
| Filing a Petition to Cancel through ESTTA, per Class | $450,000 | $940,800 | $490,800 |
| Filing a Notice of Opposition on Paper, per Class | $42,000 | $44,000 | $2,000 |
| Filing a Notice of Opposition through ESTTA, per Class | $1,650,000 | $2,318,800 | $668,000 |
| Ex Parte Appeal to the Trademark Trial and Appeal Board Filed on Paper, per Class  | $13,000 | $20,700 | $7,700 |
| Ex Parte Appeal to the Trademark Trial and Appeal Board Filed through ESTTA, per Class  | $260,000 | $671,800 | $411,800 |
| Filing a Request for an Extension of Time to File a Notice of Opposition under §2.102(c)(3) on Paper | - | $10,600 | $10,600 |
| Filing a Request for an Extension of Time to File a Notice of Opposition under §2.102(c)(3) through ESTTA | - | $526,300 | $526,300 |
| Filing a Request for an Extension of Time to File a Notice of Opposition under §2.102(c)(1)(ii) or (c)(2) on Paper | - | $37,200 | $37,200 |
| Filing a Request for an Extension of Time to File a Notice of Opposition under §2.102(c)(1)(ii) or (c)(2) through ESTTA under §2.102(c)(1)(ii) or (c)(2) through ESTTA | - | $2,456,000 | $2,456,000 |
| **Totals** | **---** | **---** | **$4,599,400** |

Summary of Changes

The increase of $4,599,400 in fees and 2,392 responses from collection 0651-0040 is on account of the changes following the rulemaking action NPRM 0651-AD08.

Changes in Burden

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| --- | --- | --- | --- |
| **Burden Type** | **Currently Approved** | **Proposed Change** | **New Estimate** |
| Respondents | 76,017 | 2,392 | 78,409 |
| Non-hour costs | $2,453,626 | $4,599,400 | $7,053,026 |

Consequently, this collection takes a net burden increase of $4,599,400 in annual (non-hour) costs as a program change.

The 0651-0040 revised total burden is as follows:

* 78,409 respondents
* $7,053,026 in annual (non-hour) fees