

SUPPORTING STATEMENT
United States Patent and Trademark Office
Submissions Regarding Correspondence and Regarding Attorney Representation
(Trademarks)
OMB Control Number 0651-0056
(September 2017)

A. JUSTIFICATION

1. Necessity of Information Collection

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.

Such individuals and businesses may also submit various communications to the USPTO regarding their pending applications or registered trademarks, including providing additional information needed to process a pending application, filing amendments to the applications, or filing the papers necessary to keep a trademark in force. In the majority of circumstances, individuals and businesses retain attorneys to handle these matters and to submit communications to the USPTO regarding the various activities related to the appointment and retention of attorneys and domestic representatives.

The rules implementing the Trademark Act are set forth in 37 CFR Part 2. In addition to governing the registration of trademarks, the Act and rules also govern the appointments and revocations of attorneys and domestic representatives. The trademark rules provide the specifics for filing requests for permission to withdraw as the attorney of record.

The information in this collection can be collected in three different ways: through a paper submission, through a dedicated TEAS form, or through a TEAS Global form. There are two TEAS forms (PTO Forms 2196 and 2201) with dedicated data fields. The TEAS Global forms permits the agency to collect information electronically when a TEAS form with dedicated data fields is not available. There are no official paper forms for these items. Individuals and businesses can submit their own paper forms, following the USPTO's rules and guidelines to ensure that all of the necessary information is provided.

Table 1 identifies the statutes and rules that permit the USPTO to collect the information needed to process these submissions.

Table 1: Information Requirements

| IC Number | Requirement | Statute | Rule |
|-----------|--|---|--|
| 1 | Revocation, Appointment, and/or Change of Address of Attorney/Domestic Representative | 15 U.S.C. §§ 1051(e), 1058(f), 1123, and 1141h(d) | 37 CFR Part 2, 2.17, 2.19, 2.24, and 2.193 |
| 2 | Request for Withdrawal as Attorney of Record/Update of USPTO's Database After Power of Attorney Ends | 15 U.S.C. § 1123 | 37 CFR Part 2, 2.19 |
| 3 | Replacement of Attorney of Record with Another Already Appointed Attorney | 15 U.S.C. § 1123 | 37 CFR Part 2, 2.17 |
| 4 | Request to Withdraw as Domestic Representative | 15 U.S.C. §§ 1051(e), 1058(f), 1123, and 1141h(d) | 37 CFR Part 2, 2.17 and 2.24 |

2. Needs and Uses

The USPTO uses the information described in this collection in various actions concerning the appointment and retention of attorneys and domestic representatives. The information in this collection is also a matter of public record and is utilized by the public for a variety of private business purposes related to establishing and enforcing trademark rights. The information is accessible online, through the USPTO website, as well as through various USPTO facilities. 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. For more specific needs and uses of the collected information, see Table 2.

The information in this collection can be submitted electronically through the Trademark Electronic Application System (TEAS).

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 USPTO information quality guidelines.

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

| | Form and Function | Form # | Needs and Uses |
|---|--|--------------------|--|
| 1 | Revocation, Appointment, and/or Change of Address of Attorney/Domestic Representative (Paper) | No Form Associated | <ul style="list-style-type: none"> Used by applicants and registrants to appoint an attorney to act on their behalf in connection with single or multiple applications or registrations, to revoke such appointments, and/or to change the address of an attorney or domestic representative. Used by foreign applicants and registrants to designate a domestic representative upon whom to serve notices or process in legal proceedings affecting the mark and/or to change the address of a domestic representative. Used by the USPTO to process requests to appoint attorneys/domestic representatives, to process requests to revoke such appointments, and/or to change the address of an attorney or domestic representative. |
| 1 | TEAS Revocation, Appointment, and/or Change of Address of Attorney/Domestic Representative | PTO Form 2196 | <ul style="list-style-type: none"> Used by applicants and registrants to electronically transmit appointments of attorneys to act on their behalf in connection with single or multiple applications or registrations, to electronically transmit revocations of those appointments, and/or to change the address of an attorney or domestic representative. Used by foreign applicants and registrants to electronically designate a domestic representative upon whom to serve notices or process in legal proceedings affecting the mark, and/or to change the address of a domestic representative. Used by the USPTO to process electronically filed requests to appoint attorneys/domestic representatives, to process electronically filed requests to revoke such appointments, and/or to change the address of an attorney or domestic representative. |
| 2 | Request for Withdrawal as Attorney of Record/Update of USPTO's Database After Power of Attorney Ends (Paper) | No Form Associated | <ul style="list-style-type: none"> Used by attorneys to submit a request for permission to withdraw as the attorney of record and to request removal of information from the current attorney and correspondence fields when the power of attorney has ended. Used by the USPTO to process requests for permission to withdraw as the attorney of record and to remove information from the current attorney and correspondence fields when the power of attorney has ended. |
| 2 | TEAS Request for Withdrawal as Attorney of Record/Update of USPTO's Database After Power of Attorney Ends | PTO Form 2201 | <ul style="list-style-type: none"> Used by attorneys to electronically submit a request for permission to withdraw as the attorney of record and to request removal of information from the current attorney and correspondence fields when the power of attorney has ended. Used by the USPTO to process electronically filed requests for permission to withdraw as the attorney of record and to request removal of information from the current attorney and correspondence fields when the power of attorney has ended. |
| 3 | Replacement of Attorney of Record with Another Already-Appointed Attorney (Paper) | No Form Associated | <ul style="list-style-type: none"> Used by applicants and registrants to submit a request that the USPTO amend the record of an application or registration by replacing the named attorney of record with another previously appointed associate attorney. Used by the USPTO to process requests that the named attorney of record be replaced with another previously appointed associate attorney. |
| 3 | Replacement of Attorney of Record with Another Already-Appointed Attorney (TEAS Global) | TEAS Global Form | <ul style="list-style-type: none"> Used by applicants and registrants to electronically submit a request that the USPTO amend the record of an application or registration by replacing the named attorney of record with another previously appointed associate attorney. Used by the USPTO to process electronically filed requests that the named attorney of record be replaced with another previously appointed associate attorney. |

| | Form and Function | Form # | Needs and Uses |
|---|--|--------------------|--|
| 4 | Request to Withdraw as Domestic Representative (Paper) | No Form Associated | <ul style="list-style-type: none"> • Used by domestic representatives to submit a request to withdraw as the domestic representative. • Used by the USPTO to process requests by domestic representatives to withdraw. |
| 4 | Request to Withdraw as Domestic Representative (TEAS Global) | TEAS Global Form | <ul style="list-style-type: none"> • Used by domestic representatives to electronically submit a request to withdraw as the domestic representative. • Used by the USPTO to process electronically filed requests by domestic representatives to withdraw. |

3. Use of Information Technology

The USPTO provides online electronic forms through the Web-accessible Trademark Electronic Application System (TEAS). TEAS provides a useful service for all trademark filers. TEAS forms are completed online and transmitted to the USPTO electronically 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 and the mark in question, based on responses provided by the user to questions posed by the Wizard. The forms are received and filed upon transmission, and a confirmation of filing is issued via e-mail to the user. TEAS Global forms provide an option for electronic submission of information when a TEAS form having dedicated fields for particular information is not available.

Please note that electronic forms can only be submitted via TEAS; filers may not e-mail their own forms to the USPTO.

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 allows the user to choose from four different search tools, is updated daily, and is easy to use. TESS can be used by potential applicants for trademark registration to assist in the determination of whether or not 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.

These systems are all accessible through the Trademark Electronic Business Center (TEBC) on the USPTO Web site. The TEBC provides descriptions of these systems, and the systems feature online "Help" programs. Thus, the USPTO offers a single source for a variety of systems useful both for making submissions to the USPTO and for tracking the status of these submissions.

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 generally 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 information is collected only when appointments of attorneys/domestic representatives, revocations of attorneys/domestic representatives, requests for permission to withdraw as the attorney of record, replacements of attorney of record with another already appointed attorney, and requests to withdraw as a domestic representative are submitted to the USPTO. This collection is unique to USPTO and does not solicit any data that is already available at the agency, nor does it create a duplication of effort.

5. Minimizing the Burden to Small Entities

The USPTO expects that the submission of the information provided places no undue burden on small businesses or other small entities. The same information is required from every customer and is not available from any other source.

6. Consequences of Less Frequent Collection

This information collection could not be conducted less frequently, since the information is collected only when voluntarily submitted by the public. If the information were not collected, applicants and registrants could not appoint attorneys/domestic representatives to represent them at the USPTO or revoke those appointments. Likewise, attorneys and domestic representatives could not request permission to withdraw as the attorney of record or the domestic representative, nor could applicants and registrants request replacement of the attorney of record with another already appointed attorney. If this information was not collected, 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 60-Day Federal Register Notice was published on July 6th, 2017 (82 FRN 31308). The public comment period ended on September 5th, 2017. No public comments were received in response to the notice.

The USPTO has long-standing relationships with several large and well-organized groups who frequently communicate their views, such as the American Bar Association (ABA), American Intellectual Property Law Association (AIPLA), and International Trademark Association (INTA), as well as business groups and users of our public facilities.

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 stakeholders and embrace the USPTO's e-government initiative.

Views expressed by these groups are considered in developing proposals for information collection requirements. No views have been expressed regarding 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

Trademark applications and registrations 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 in this collection is considered to be of a sensitive nature.

12. Estimate of Hour and Cost Burden to Respondents

Table 3 calculates the anticipated 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 84,291 responses per year for this collection, with approximately 82,605 of them being filed through TEAS.

- **Burden Hour Calculation Factors**

The USPTO estimates that it takes the public approximately 5 to 30 minutes (0.08 to 0.50 hours) to complete this information, depending upon the amount and type of information requested in a particular case. This includes the time to gather the necessary information, prepare the requests, and submit them 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. Certain values that do not result in round whole numbers are rounded up to match the data submitted to OMB; as only whole numbers are reportable. These numbers are noted with asterisks in the table below.

- **Cost Burden Calculation Factors**

The USPTO believes that attorneys will complete these applications. The USPTO uses a professional of \$438 per hour for respondent cost burden calculations, which is the mean rate for attorneys in private firms as show in the 2017 Report of the Economic Survey, published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association (AIPLA).

Table 3: Burden Hours/Burden Cost to Respondents

| IC # | Item | Estimated Time for Response (Hour) (a) | Estimated Annual Responses (b) | Estimated Annual Burden Hours (c) (a) x (b) | Rate (\$/hr) (d) | Estimated Total Annual Hourly Cost Burden (e) (c) x (d) |
|------|--|--|--------------------------------|---|------------------|---|
| 1 | Revocation, Appointment, and/or Change of Address of Attorney/Domestic Representative (Paper) | 0.17 | 150 | 26* | \$438.00 | \$11,388.00 |
| 1 | Revocation, Appointment, and/or Change of Address of Attorney/Domestic Representative (TEAS) | 0.08 | 75,000 | 6,000 | \$438.00 | \$2,628,000.00 |
| 2 | Request for Withdrawal as Attorney of Record/Update of USPTO's Database After Power of Attorney Ends (Paper) | 0.25 | 18 | 5* | \$438.00 | \$2,190.00 |

| | | | | | | |
|---|---|------|---------------|--------------|----------|-----------------------|
| 2 | Request for Withdrawal as Attorney of Record/Update of USPTO's Database After Power of Attorney Ends (TEAS) | 0.20 | 9,000 | 1,800 | \$438.00 | \$788,400.00 |
| 3 | Replacement of Attorney of Record with Another Already-Appointed Attorney (Paper) | 0.50 | 1 | 1* | \$438.00 | \$438.00 |
| 3 | Replacement of Attorney of Record with Another Already-Appointed Attorney (TEAS Global) | 0.50 | 1 | 1* | \$438.00 | \$438.00 |
| 4 | Request to Withdraw as Domestic Representative (Paper) | 0.17 | 1 | 0* | \$438.00 | \$0.00 |
| 4 | Request to Withdraw as Domestic Representative (TEAS Global) | 0.08 | 120 | 10* | \$438.00 | \$4,380.00 |
| | Total | | 84,291 | 7,843 | | \$3,435,234.00 |

*denotes numbers that have been rounded to the nearest whole number

13. Total Annual (Non-hour) Cost Burden

The sole source of non-hour cost burden associated with this information collection is postage costs for sending paper applications. The USPTO estimates that these submissions will typically weigh approximately one ounce and that the first-class postage rate for these submissions is 49 cents. Additionally, the USPTO estimates that 98% of the paper filings will be mailed to the agency, totaling 170 submissions. Therefore, the USPTO estimates that the total annualized (non-hour) cost burden for this collection is \$83.30 per year.

14. Annual Cost to the Federal Government

The USPTO employs GS-9 and GS-11 employees to process submissions for this information collection.

The USPTO estimates that it will take the GS-9, step 5 employee between 5 and 7 minutes (0.08 and 0.12 hours) to process the revocations and appointments and between 3 and 5 minutes (0.05 and 0.08 hours) to process the replacements of attorney of record with another already appointed attorney and requests to withdraw as domestic representative. The USPTO estimates that the cost of a GS-9, step 5 employee is \$38.81 (GS hourly rate of \$29.85 with 30% (\$8.96) added for benefits and overhead).

The USPTO estimates that it take will the GS-11, step 5 employee between 8 and 10 minutes (0.13 and 0.17 hours) to process the requests for permission to withdraw as the attorney of record. The USPTO estimates that the cost of a GS-11, step 5 employee is \$46.96 (GS hourly rate of \$36.12 with 30% (\$10.84) added for benefits and overhead).

Table 4 illustrates the processing hours and costs of this information collection to the Federal Government:

Table 4: Burden Hours and Cost to the Federal Government

| IC Number | Item | Hours (a) | Responses (yr) (b) | Burden (hrs/yr) (a) x (b) (c) | Rate (\$/hr) (d) | Total Cost (\$/hr) (c) x (d) (e) |
|-----------|--|--------------|--------------------------|--|------------------------|---|
| 1 | Revocation, Appointment, and/or Change of Address of Attorney/Domestic Representative (Paper) | 0.12 | 150 | 18.00 | \$38.81 | \$698.58 |
| 1 | Revocation, Appointment, and/or Change of Address of Attorney/Domestic Representative (TEAS) | 0.08 | 75,000 | 6,000.00 | \$38.81 | \$232,860.00 |
| 2 | Request for Withdrawal as Attorney of Record/Update of USPTO's Database After Power of Attorney Ends (Paper) | 0.17 | 18 | 3.06 | \$46.96 | \$143.70 |
| 2 | Request for Withdrawal as Attorney of Record/Update of USPTO's Database After Power of Attorney Ends (TEAS) | 0.13 | 9,000 | 1,170.00 | \$46.96 | \$54,943.20 |
| 3 | Replacement of Attorney of Record with Another Already-Appointed Attorney (Paper) | 0.08 | 1 | 0.08 | \$38.81 | \$3.10 |
| 3 | Replacement of Attorney of Record with Another Already-Appointed Attorney (TEAS Global) | 0.05 | 1 | 0.05 | \$38.81 | \$1.94 |
| 4 | Request to Withdraw as Domestic Representative (Paper) | 0.08 | 1 | 0.08 | \$38.81 | \$3.10 |
| 4 | Request to Withdraw as Domestic Representative (TEAS Global) | 0.05 | 120 | 6.00 | \$38.81 | \$232.86 |
| | TOTAL | - - - - | 84,291 | 7,197.27 | - - - - - | \$288,886.49 |

15. Reason for Change in Burden

A. Changes in collection since previous OMB approval in 2014

OMB previous approved the renewal of this information collection in September 2014. The current collection contains:

- 108,940 responses

- 10,540 burden hours
- \$4,100,060 in respondent hourly cost burden
- \$2,493 in annual (non-hourly) costs

Changes from the 60-Day *Federal Register* Notice

The 2017 Report of the Economic Survey was published in August, 2017 by the American Intellectual Property Law Association, which updated the attorney rate from \$410 to \$438 per hour.

B. Changes proposed in this request to OMB

The proposed collection, as outlined in the tables above, seeks to modify the existing collection. The new proposed collection contains an estimated:

- 84,291 responses
- 7,843 burden hours
- \$3,435,234 in respondent hourly cost burden
- \$83.30 in annual (non-hourly) costs

Changes in Responses and Burden Hours

For this renewal, the USPTO estimates that the annual responses will decrease by 24,649 (from 108,940 to 84,291) from the currently approved responses for this collection and the total burden hours will decrease by 2,697 (from 10,540 to 7,843) from the currently approved burden for this collection.

Changes in Respondent Cost Burden

The total respondent cost burden for this collection has decreased by \$554,826 (from \$4,100,060 to \$3,435,234) from the previous renewal of this collection in September 2014:

- Increases in hourly rates. The 2014 renewal used an estimated rate of \$389 for respondents to this collection, which was an average attorney rate. For the current renewal, the USPTO is using the updated hourly rate of \$438 for attorneys.
- Decreases in estimated burden hours. The total estimated burden hours have decreased from 10,540 in the 2014 renewal to 7,843 for the current renewal due to overall decreases in the estimated responses to this collection.

Changes in Annual (Non-hour) Cost

For this renewal, the USPTO estimates that the total annual (non-hour) cost will decrease by \$2,409.70 (from \$2,493 to \$83.30). These changes are due to administrative adjustments:

Administrative Adjustments

- Decreases in respondents sending submissions in paper, thus reducing the postage costs of the collection.

16. Project Schedule

The USPTO does not plan to publish his 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. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection of information does not employ statistical methods.