

SUPPORTING STATEMENT
United States Patent and Trademark Office
Patent and Trademark Financial Transactions
OMB CONTROL NUMBER 0651-0043
(January 2017)

A. JUSTIFICATION

1. Necessity of Information Collection

Under 35 U.S.C. § 41 and 15 U.S.C. § 1113, the United States Patent and Trademark Office (USPTO) charges fees for processing and other services related to patents, trademarks, and information products. Customers may submit payments to the USPTO by several methods, including credit or debit card, deposit account, electronic funds transfer (EFT), and paper check transactions. The provisions of 35 U.S.C. § 41 and 15 U.S.C. § 1113 are implemented in 37 CFR 1.16-1.28, 2.6-2.7, and 2.206-2.209.

This information collection includes the Credit Card Payment Form (PTO-2038), which provides the public with a convenient way to submit a credit or debit card payment by fax or mail for fees related to a patent, trademark, or information product. Customers may also submit credit or debit card payments via the USPTO Payment Page when using online systems through the USPTO website.

Customers may establish a deposit account for making fee payments online using Financial Manager at the USPTO website. Deposit accounts eliminate the need to submit a check, credit or debit card, or other form of payment for each fee transaction with the USPTO. Additionally, in the event that a fee amount due is miscalculated, customers may authorize the USPTO to charge any remaining balance to the deposit account and therefore avoid the potential consequences of underpayment. As customers use their deposit accounts to make payments, they may deposit funds to replenish their accounts by mailing a check to the USPTO, sending funds via a wire transfer, or making a deposit online via EFT using Financial Manager at the USPTO website. Replenishments may not be made by credit or debit card. Customers may also withdraw funds or close their deposit accounts online using Financial Manager at the USPTO website.

In addition to credit or debit cards and deposit accounts, customers may also use EFT to make online fee payments to the USPTO or replenish a deposit account online. Customers must first establish a user profile and submit their banking information online using Financial Manager at the USPTO website. Once their stored EFT is activated in Financial Manager (after an eight business day verification period), customers may select the EFT as a payment method for online payment transactions.

Under 37 CFR 1.26 and 2.209, the USPTO may refund fees paid by mistake or in excess of the required amount. In general, overpayments of amounts larger than \$25

are returned to the customer using the same method as the original payment when identified by the USPTO. For refund amounts of \$25 or less, or for cases of overpayment or fees paid by mistake not yet identified by the USPTO, customers must submit a written request to the Refund Branch of the USPTO Office of Finance. Currently, there is no standard form for general refund requests. The USPTO is developing a Request for Refund form (PTO-2326) and plans to make this available for customer use in the near future.

The USPTO deployed the Financial Manager system allowing customers to add, manage, and report on payment methods in their online user profiles at the USPTO website. After establishing a USPTO.gov account username and password, customers may add their credit or debit card, deposit account, and EFT information to their account using the Financial Manager web interface. Customers may then manage and report on these stored payment methods online. The stored payment methods may be used when the customer conducts transactions with the USPTO.

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

Table 1: Information Requirements

IC No.	Requirement	Statute	Rule
1	Credit Card Payment Form	35 U.S.C. § 41, 15 U.S.C. § 1113	37 CFR 1.23(b) and 2.207(b)
2	Deposit Account Replenishment, Withdrawal, or Closure	35 U.S.C. § 41, 15 U.S.C. § 1113	37 CFR 1.21(b), 1.25, 2.6, and 2.208
3	Refund Request	35 U.S.C. § 41, 15 U.S.C. § 1113	37 CFR 1.26, 1.28, and 2.209
4	Financial Manager Payment Methods	35 U.S.C. § 41, 15 U.S.C. § 1113	37 CFR 1.23, 1.25 and 2.206-2.208
5	Online Payment	35 U.S.C. § 41, 15 U.S.C. § 1113	37 CFR 1.23, 1.25 and 2.206-2.208

2. Needs and Uses

This collection allows the public to pay for patent and trademark fees by credit or debit card, deposit account, or EFT, establish and manage USPTO deposit accounts, request refunds, and set up or maintain Financial Manager user profiles. The USPTO uses this collection to process fee payments, handle deposit account requests, issue refunds, and store financial information and support user accounts.

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

Table 2: Needs and Uses

IC No.	Form and Function	Form #	Needs and Uses
1	Credit Card Payment Form	PTO-2038	<ul style="list-style-type: none"> Used by the public to pay fees by mail or fax using a credit or debit card and to advise the USPTO of the purpose for which the fee is being submitted. Used by the USPTO to process the fee payment and determine whether the appropriate fee has been submitted.
2	Deposit Account Replenishment, Withdrawal, or Closure	No Form	<ul style="list-style-type: none"> Used by the public to submit additional funds for a deposit account by mail or to replenish, withdraw, or close a deposit account online using Financial Manager. Used by the USPTO to process additions/withdrawals of funds to/from a deposit account or close a deposit account.
3	Refund Request	Future Form PTO-2326	<ul style="list-style-type: none"> Used by the public to request refunds for overpayments or fees paid by mistake. Used by the USPTO to issue refunds at the request of the customer.
4	Financial Manager Payment Methods	No Form	<ul style="list-style-type: none"> Used by the public for online creation and management of their financial transactions with the USPTO. Used by the USPTO to establish a financial profile to store account and transaction information for customers.
5	Online Payment	No Form	<ul style="list-style-type: none"> Used by the public to make an online payment by credit or debit card, deposit account, or EFT from the USPTO Payment Page when using online systems through the USPTO website. Used by the USPTO to process online payments and generate customer receipts.

3. Use of Information Technology

The agency leverages information technology to support the ability of customers to use online systems provided by the USPTO for paying fees related to patents, trademarks, or information products. This information collection currently includes web-based forms used to make online fee payments; replenish, withdraw, or close deposit accounts; and establish user profiles for credit or debit card, deposit account, or EFT payment methods in Financial Manager at the USPTO website.

Customers must be signed in to Financial Manager using their registered USPTO.gov username and password in order to set up or manage their stored payment methods or make an online fee payment using a stored payment method in Financial Manager. An option to pay online with a credit or debit card as a guest user is also available. Customers can update their own USPTO.gov account information or password without assistance from USPTO staff. The USPTO enforces a 180-day password reset policy for external customers.

The payment portion of these online transactions is handled by an electronic revenue system maintained by the USPTO. The customer uses the web as an interface to the revenue system, which maintains a secure payment server. The online payment system uses Secure Sockets Layer (SSL) technology in order to encrypt the payment data and transmit it securely over the internet. The customer is presented with an electronic confirmation receipt after the payment is submitted and may print it out as a record of payment.

The information for Financial Manager stored payment methods is collected electronically. Customers with a Financial Manager profile at the USPTO website will receive notifications and alerts, depending on their assigned account permissions and the status of their stored payment methods. The USPTO utilizes role-based access controls to provide customers with greater security and enhanced customization for account access. There are four available permissions on Financial Manager accounts. Users will only be able to perform functions related to the permissions they are assigned. In order to make online payments, a user must be assigned Fee Payer permissions. In order to replenish or withdraw funds from a deposit account, a user must be assigned Funds Manager permissions. In order to close a deposit account or maintain any stored payment method information, a user must be assigned Administrator permissions. In order to run financial transaction reports, a user must be assigned Reporter permissions.

4. Efforts to Identify Duplication

This information is not collected elsewhere and does not result in a duplication of effort.

5. Minimizing Burden to Small Entities

The collection does not impose a significant economic burden on small entities or small businesses. The same information is required from every customer and is not available from any other source.

6. Consequences of Less Frequent Collection

This information is collected only when a customer makes an online fee payment, makes a credit or debit card payment by mail or fax, establishes or maintains a deposit account, credit or debit card, or EFT profile online in Financial Manager, or requests a refund from the USPTO. This information could not be collected less frequently. If the information were not collected, the USPTO would not be able to accept payments using credit or debit cards, deposit accounts, or EFT and process related requests.

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 November 15, 2017 (82 Fed. Reg. 52889). The comment period ended on January 16, 2018. One public comment was received.

The comment touched on several aspects of agency estimates. One suggestion concerned the hourly respondent rate. Collection precedent used a combined paralegal and administrator rate, which the commenter thought too low. This renewal will now

incorporate usage of the 2017 AIPLA wage rate for attorneys as a part of the hourly respondent rate. Other recommendations concerned the titles of certain IC lines and their estimated time of completion. This renewal has adjusted the estimated time of completion on the Financial Manager Payment Methods line, adjusted the title of the Deposit Account Replenishment line, and returned a line covering Online Payments that was previously included in the collection as My Financials.

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, inventor associations, 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 comments or viewpoints were 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

This collection contains personal information that is subject to the Privacy Act and is covered under the system of records notice entitled "PAT/TM-10 Deposit Accounts and Electronic Funds Transfer Profiles," which was published in the *Federal Register* on July 6, 2006 (71 Fed. Reg. 38387). This information, such as credit or debit card numbers and personal information associated with deposit accounts and EFT profiles, will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. § 552) and the Privacy Act (5 U.S.C. § 552a).

The Credit Card Payment Form includes a statement advising the cardholder that if a credit or debit card number is included on any form or document other than the Credit Card Payment Form, the USPTO will not be liable in the event that the credit or debit card number becomes public knowledge. The USPTO originally included this warning statement on the form because patent and trademark applicants may submit fees on forms or documents other than the Credit Card Payment Form. These other forms and documents also contain this warning and directions to use the official Credit Card Payment Form for submitting credit or debit card payment information.

This warning statement is necessary because of the different confidentiality requirements for patents and trademarks. Confidentiality of information concerning 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 available to the public, subject to the provisions for providing only a redacted copy of the file contents. Trademark applications and registrations are

also open to public inspection. Confidentiality is not required in the processing of trademark applications.

In order to protect confidentiality, the USPTO will not include the credit or debit card information submitted using the provided credit card payment forms among the patent or trademark records open to public inspection. If a customer supplies credit or debit card information on a form or document (e.g. in correspondence related to a patent or trademark) other than a credit card payment form provided by the USPTO, the credit or debit card information may become part of a patent or trademark file that is open to public inspection. In such cases, the USPTO will not be liable if the credit or debit card information becomes public knowledge.

Credit or debit card, EFT, and deposit account records are kept under a variety of administrative controls to ensure that the information is kept confidential. Systems are maintained in areas that are only accessible by authorized personnel and in buildings protected by security systems after business hours. The USPTO maintains paper records in lockable file cabinets or in file cabinets in secure areas. Electronic records are stored in secured premises with appropriate measures taken to limit electronic access to authorized personnel who require access for the performance of their official duties.

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 4,885,505 total responses per year for this collection, with approximately 20% of these responses submitted by small entities.

The USPTO estimates that approximately 98% of the total responses for this collection will be submitted electronically using the USPTO Payment Page and the Financial Manager web-based forms, which customers may access through the USPTO Web site.

- **Burden Hour Calculation Factors**

The USPTO estimates that it will take the public approximately one to eight minutes to gather the necessary information, prepare the appropriate form or document, and submit the items in this collection to the USPTO.

- **Cost Burden Calculation Factors**

The USPTO estimates that the remaining items in this collection will be supplied by intellectual property legal professionals (patent attorneys, agents and paraprofessionals).

The professional rate for attorneys in private firms is \$438 per hour, as published in a report by the 2017 Committee on Economics of Legal Practice of the American Intellectual Property Law Association.

The USPTO uses a paraprofessional rate of \$145 per hour, which is the average rate for paralegals, as shown in the 2017 *National Utilization and Compensation Survey* published by the National Association of Legal Assistants (NALA).

Therefore, the combined average rate for respondents is estimated to be \$291.450.

Table 3: Burden Hour/Burden Cost to Respondents for Patent and Trademark Financial Transactions

IC No.	Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a) x (b)	Rate (\$/hr) (d)	Total Cost (\$/yr) (e) (c) x (d)
1	Credit Card Payment Form (PTO-2038)	0.03	83,329	2,777.63	\$291.50	\$809,680.12
2	Deposit Account Replenishment, Withdrawal, or Closure	0.03	46,652	1,555.07	\$291.50	\$453,301.93
3	Refund Request	0.07	7,636	509.07	\$291.50	\$148,392.93
4	Financial Manager Payment Methods	0.13	2,000	266.67	\$291.50	\$77,733.33
5	Online Payments	0.05	4,745,888	237,294.40	\$291.50	\$69,171,317.60
	Totals	---	4,885,505	242,402.84	---	\$70,660,425.92

13. Total Annual (Non-hour) Cost Burden

This collection contains non-hourly cost burdens in both service fees paid by the public and associated postage costs for mailing items to the USPTO.

Service Fees

There are service fees associated with deposit accounts and returned payments, for a total of \$96,400 per year:

Table 4: Service Fees

IC No.	Information Collection Instrument	Estimated Annual Responses (a)	Service fee (\$) (b)	Total non-hour cost burden (yr) (a) x (b) = (c)
2	Service charge for deposit accounts below the minimum balance at the end of the month	3,600	\$25.00	\$90,000.00
5	Service charge for processing a payment refused	128	\$50.00	\$6,400.00
Totals	---	3,728	---	\$96,400.00

Postage Costs

The non-electronic items in this collection have associated first-class postage costs when submitted by mail, for a total of \$15,019.97 per year:

- 4,166 Credit Card Payment Forms (approximately 5% of the 83,329 total submitted) that are mailed in by themselves and without other supporting documents, at \$0.49 postage: \$2,041.34
- 26,487 other non-electronic submissions per year, including 25,487 Deposit Account Replenishments and 1,000 Refund Requests, at \$0.49 postage: \$12,978.63

The total (non-hour) respondent cost burden for this collection is estimated to be \$111,419.97 per year, which includes \$96,400.00 in service fees and \$15,019.97 in postage.

14. Annual Cost to the Federal Government

The USPTO estimates that it takes a GS-7, step 1 employee approximately 6 minutes (0.10 hours) to process a Credit Card Payment Form and approximately 12 minutes (0.20 hours) to process a Refund Request. The USPTO estimates that the cost of a GS-7, step 1 employee is \$28.64 per hour (GS hourly rate of \$22.03 with 30% (\$6.61) added for benefits and overhead).

The USPTO estimates that it takes a GS-9, step 1 employee approximately 12 minutes (0.20 hours) to process a paper Deposit Account Replenishment submission. The USPTO estimates that the cost of a GS-9, step 1 employee is \$35.02 per hour (GS hourly rate of \$26.94 with 30% (\$8.08) added for benefits and overhead).

When a customer makes an online submission using the USPTO Payment Page or web-based forms within Financial Manager to replenish or withdraw deposit account funds, the transaction is processed electronically and recorded directly into the revenue system with no staff time required. Similarly, when a customer creates or maintains a

deposit account, EFT, or credit or debit card profile within Financial Manager, the information is processed electronically and the profile established or updated with no staff time required.

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

Table 5: Burden Hour/Cost to the Federal Government for Patent and Trademark Financial Transactions

IC No.	Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a) x (b)	Rate (\$/hr) (d)	Total Cost (\$/yr) (e) (c) x (d)
1	Credit Card Payment Form (PTO-2038)	0.10	83,329	8,332.90	\$28.64	\$238,654.26
2	Deposit Account Replenishment (paper submissions)	0.20	18,851	3,770.20	\$35.02	\$132,032.40
3	Refund Request	0.20	7,636	1,527.20	\$28.64	\$43,739.01
	Totals	---	109,816	13,630.30	---	\$414,425.67

The USPTO estimates that the cost of providing and maintaining the electronic systems to process these transactions is approximately \$2,039,912.00 annually, including costs for associated hardware, software, licensing, and support. Therefore, this information collection has a total government processing cost of approximately \$2,454,337.67 per year.

15. Reason for Change in Burden

A. Changes in Collection since previous OMB approval in (Year)

OMB previously approved the renewal of this information collection in January 2014. The current collection contains:

- 2,590,950 responses
- 86,258 burden hours
- \$4,815,201.00 in respondent hourly cost burden
- \$129,937.00 in annual (non-hour) costs

Change since the publication of the 60-day notice

Since the publication of the 60-day notice in the *Federal Register* on November 15, 2017, the following changes have been made to this collection:

- An increase of 4,766,709 responses
- An increase of 238,007.01 burden hours
- An increase of \$70,366,432.59 in hourly respondent costs
- A decrease of \$1,304.87 in non-hourly costs

These changes have been made to reflect more accurate reporting and are made in response to a public comment. One IC line (Online Payments) has been modified in order to account for the financial payment system; this item was not included in the 60 day notice. In addition, the respondent wage rate has been increased in response to a public comment. These changes have been made to reflect more accurate reporting. These changes have resulted in increases in responses, burden hours, and hourly respondent costs. The decrease in non-hourly costs reflects the decrease in the number of mailed submissions received by the USPTO.

B. Changes proposed in this request to OMB.

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

- 4,885,505 responses
- 242,402.84 burden hours
- \$70,660,425.92 in respondent hourly cost burden
- \$111,419.97 in annual (non-hour) costs

Change in Respondent Cost Burden

The total respondent cost burden for this collection has increased by \$70,366,432.59 (from \$4,815,201.00 to \$70,660,425.92 from the previous renewal of this collection in January 2014:

- **Increase in estimated burden hours.** The total estimated burden hours have increased from 86,258 in the 2014 renewal to 242,402.84 for the current renewal due to the addition of an IC line to this collection.
- **Increase in respondent wage rate.** The respondent rate has increased from \$53 per hour to \$291.50 per hour. The previous renewal used a combined wage rate for fee administrators and paraprofessionals. The current renewal uses a combined rate for attorneys and paraprofessionals.

Changes in Responses and Burden Hours

For this renewal, the USPTO estimates that the annual responses will increase by 2,294,555 (from 2,590,950 to 4,885,505) and the total burden hours will increase by 81,862.17 (from 86,258 to 4,935.83) from the currently approved burden for this collection. These changes are due to the following program changes:

Program Changes:

- **Increase of 2,294,555 responses.** This collection was previously approved with a total of 2,590,950 responses. The USPTO is increasing the number of

responses is due to the fact that the agency is now including all online payments on the USPTO Payment Page. This is reflected in IC line 5 (Online Payments).

Changes in Annual (Non-hour) Costs

For this renewal, the USPTO estimates that the total annual (non-hour) costs will decrease by \$18,517.03 (from \$129,937.00 to \$111,419.97), due to a change in service fees from \$108,930.00 to \$96,400.00 and change in postage fees from to \$20,848.00 to \$15,019.97.

16. Project Schedule

The USPTO does not intend to publish this 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 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.