

SUPPORTING STATEMENT
United States Patent and Trademark Office
Invention Promoters/Promotion Firms Complaints
OMB CONTROL NUMBER 0651-0044
April 2019

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 website. 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.

A complaint submitted to the USPTO must be clearly marked, or otherwise identified, as a complaint. The complaint must include: (1) the name and address of the complainant; (2) the name and address of the invention promoter; (3) the name of the customer; (4) the invention promotion services offered or performed by the invention promoter; (5) the name of the mass media in which the invention promoter advertised providing such services; (6) an example of the relationship between the customer and the invention promoter; and (7) a signature of the complainant. Identifying information is necessary so that the USPTO can both forward the complaint to the invention promoter or promotion firm as well as 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 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 form is available for download from the USPTO website. 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 response to the complaints.

Table 1 provides the specific 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 is used by the public and the USPTO:

Table 2: Needs and Uses

IC Number	Form and Function	Form Number	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

Currently, 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 website. 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 website.

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 USPTO information collection 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 February 12, 2019 (84 Fed. Reg. 3417). The comment period ended on April 15, 2019. No comments were received.

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.

The USPTO must collection personal information in order to respond to a complaint, though only the complainant's name is included in the publication of the complaint. If a 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 and address. 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 22 responses per year for this collection. None of the responses will be submitted electronically.

- **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 (0.50 hours) for an invention promoter or promotion firm to prepare and submit a response to a complaint.

- **Cost Burden Calculation Factors**

The USPTO expects that paraprofessionals and independent inventors will be filing the complaints. The professional hourly rate for paraprofessionals is \$145 per hour, as listed in the 2016 *National Utilization and Compensation Survey Report* published by the National Association of Legal Association. The hourly rates for independent inventors is \$49.64, based on the average of the mean rates for Engineers and Scientists, according to the Bureau of Labor Statistics. The average rate of these two rates is \$97.32.

The USPTO also expects that the response to the complaints will be prepared by attorneys or invention promoters. The professional hourly rates for intellectual property attorneys in private firms is \$438. The rates is established in estimates in the 2017 *Report on the Economic Survey*, published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association.

Table 3: Burden Hour/Burden Cost to Respondents

IC Number	Item	Hours (a)	Response (b)	Burden (c) (a) x (b)	Rate (d)	Total Cost (e) (c) x (d)
1	Complaint Regarding Invention Promoter (PTO/SB/2048)	0.25 (15 minutes)	12	3	\$97.43	\$291.96
2	Response to the Complaint	0.50 (30 minutes)	10	5	\$438.00	\$2,190.00
	Total		22	8		\$2,481.96

13. Total Annual (Non-hour) Cost Burden

There are no capital startup, maintenance fees, operating fees, processing fees, or filing fees associated with this collection. There is a non-hourly cost associated with this collection in the form of postage costs.

Postage Costs

For this collection, it is estimated that 12 complaints will be received by first-class mail. The USPTO estimates that the cost of first-class mail will be \$0.50, resulting in a total of \$6 for mailed complaints.

The USPTO also estimates that it will receive 10 responses to complaints using overnight mail services. The cost of overnight mail services is estimated to be \$23.95, resulting in a total of \$239.50 for mailed responses to complaints.

Total

The total (non-hour) respondent cost burden for this collection is estimated to be \$245.50 per year, which includes \$245.50 in postage costs.

14. Annual Cost to the Federal Government

The USPTO employs a GS-7 to complete the intake administrative process, a GS-15 to review the complaint, and a GS-9 and a GS-11 to publish the complaint.

The USPTO estimates that the cost of a GS-7, step 1 employee is \$29.29 (GS-hourly rate of \$22.53 with 30% (\$6.76) added for benefits and overhead). The USPTO estimates the cost of a GS-9, step 1 is \$35.83 (GS hourly rate of \$27.56 with 30% (\$8.27) added for benefits and overhead). The USPTO estimates that the cost of a GS-9, step 1 is \$43.34 (GS hourly rate of \$33.34 with 30% (\$10) added for benefits and overhead). The USPTO estimates that the cost of a GS-15, step 1 is \$85.87 (GS-hourly rate of \$66.05 with 30% (\$19.82) added for benefits and overhead). The average of these four rates is \$48.58.

The USPTO estimates that it takes the employees a total of 2.25 hours to process the submissions in this collection.

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

IC Number	Item	Response Time (a)	Responses (b)	Burden (c) (a) x (b)	Rate (d)	Total Cost (e) (c) x (d)
1	Complaints Regarding Invention Promoters (PTO/SB/2048)	2.25	12	27.00	\$48.58	\$1,311.66
2	Responses to the Complaints	2.25	10	22.50	\$48.58	\$1,093.05
	Total		22	49.50		\$2,404.71

15. Summary of Changes in Burden

A. Changes in Collection since previous OMB approval in 2016

OMB previously approved this information collection in March 2016. The current collection contains:

- 50 responses
- 17.50 burden hours
- \$3,192.45 in respondent cost burden
- \$493.70 in annual (non-hour) costs

B. Change in Respondent Cost Burden

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

- 22 responses
- 8 burden hours
- \$2,481.96 in respondent hourly cost burden
- \$245.50 in annual (non-hour) costs

Change in Respondent Cost Burden

The total respondent cost burden for this collection decreased by \$713.49 (from \$3,192.45 to \$2,481.96) from the previous renewal of this collection in March 2016:

- Increases in estimated hourly rates. The 2016 renewal used an estimated rate of \$170.33, which was the average rate of independent inventors, paraprofessionals, attorneys, and invention promoters. For the current renewal, the USPTO is using updated hourly rates of \$438 for attorneys, \$145 for paraprofessionals, and \$46.94 for independent inventors.
- Decrease in estimated burden hours. The total estimated burden hours have decreased from 17.50 in the 2016 renewal to 8 for the current renewal due to overall decreases in the estimated annual responses for this collection.

Changes in Responses and Burden Hours

For this renewal, the USPTO estimates that the annual responses will decrease by 42 (from 50 to 8) and the total burden hours will decrease by 9.5 (from 17.5 to 8) from the currently approved burden for this collection.

Changes in Annual (Non-hour) Costs

For this renewal, the USPTO estimates that the total annual (non-hour) costs will decrease by \$248.20 (from \$493.70 to \$245.50).

16. Project Schedule

The USPTO does not plan to publish this information for statistical use.

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.