

SUPPORTING STATEMENT
United States Patent and Trademark Office
Legal Processes
OMB CONTROL NUMBER 0651-0046
(November 2019)

A. JUSTIFICATION

1. Necessity of Information Collection

The purpose of this collection is to cover information requirements related to civil actions and claims involving current and former employees of the United States Patent and Trademark Office (USPTO). The rules for these legal processes may be found under 37 CFR Part 104, which outlines procedures for service of process, demands for employee testimony and production of documents in legal proceedings, reports of unauthorized testimony, employee indemnification, and filing claims against the USPTO under the Federal Tort Claims Act (28 U.S.C. § 2672) and the corresponding Department of Justice regulations (28 CFR Part 14). The public may also petition the USPTO Office of General Counsel under 37 CFR 104.3 to waive or suspend these rules in extraordinary cases.

The procedures under 37 CFR Part 104 ensure that service of process intended for current and former employees of the USPTO is handled properly. The USPTO will only accept service of process for an employee acting in an official capacity. When a summons is served on a current or former USPTO employee, the employee should note the time, place, and method of service on the summons. The employee should then immediately notify and forward the summons to the Office of General Counsel at the USPTO. The Office of General Counsel will determine to what extent an employee may comply with a demand for testimony or documents. The USPTO will not authorize employee testimony on the validity of a patent grant or registered trademark. The rules governing production of documents do not affect any rights granted under the Freedom of Information Act (5 U.S.C. § 552), the Privacy Act (5 U.S.C. § 552a), or the Trade Secrets Act (18 U.S.C. § 1905). In cases involving unauthorized testimony or requests for indemnification, the employee must forward the relevant information or documentation to the Office of General Counsel.

There are no forms provided by the USPTO for this collection. For filing claims under the Federal Tort Claims Act, the public may use Standard Form 95 “Claim for Damage, Injury, or Death,” which is provided by the Department of Justice and approved by the Office of Management and Budget (OMB) under OMB Control Number 1105-0008.

The specific statutes and regulations authorizing the USPTO to collect this information are provided in Table 1 below.

Table 1: Information Requirements of Information Collected

IC Number	Requirement	Statute	Rule	Form Number
1	Petition to Waive Rules	35 U.S.C. §§ 2(b)(2) and 3(a)(2)	37 CFR 104.3	No Form Associated
2	Service of Process	35 U.S.C. § 2(b)(2)	37 CFR 104.11 and 104.12	No Form Associated
3	Forwarding Service	35 U.S.C. § 2(b)(2)	37 CFR 104.12(b)	No Form Associated
4	Employee Testimony and Production of Documents in Legal Proceedings	35 U.S.C. § 2(b)(2)	37 CFR 104.22 and 104.23	No Form Associated
5	Forwarding Demands	35 U.S.C. § 2(b)(2)	37 CFR 104.22(a)	No Form Associated
6	Report of Unauthorized Testimony	35 U.S.C. § 2(b)(2)	37 CFR 104.23(c)	No Form Associated
7	Possible Indemnification Cases	35 U.S.C. § 2(b)(2)	37 CFR 104.31 and 104.32	No Form Associated
8	Employee Indemnification	35 U.S.C. § 2(b)(2)	37 CFR 104.31 and 104.32	No Form Associated
9	Tort Claims	28 U.S.C. § 2672, 35 U.S.C. § 2(b)(2)	37 CFR 104.41 and 104.42	Standard FORM 95 OMB NO. 1105-0008

2. Needs and Uses

The public uses this collection to submit information required by USPTO regulations covering legal processes. This information collection is necessary so that respondents or their representatives may serve a summons or complaint on the USPTO, demand employee testimony and documents related to a legal proceeding, or file a claim under the Federal Tort Claims Act. Respondents may also petition the USPTO to waive or suspend these rules for legal processes. This collection is also necessary so that current and former USPTO employees may properly forward service and demands to the Office of General Counsel, report unauthorized testimony, and request indemnification.

The USPTO covers current employees as respondents under this information collection, even though their responses do not require approval under the Paperwork Reduction Act. In those instances where both current and former employees may respond to the USPTO, the agency estimates that the number of respondents will be small.

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 Number	IC Instrument	Form #	Needs and Uses
1	Petition to Waive Rules	No Form Associated	<ul style="list-style-type: none"> Used by the public to petition the USPTO to either waive or suspend a rule. Used by the USPTO to determine whether the circumstances warrant the suspension of the rules.
2	Service of Process	No Form Associated	<ul style="list-style-type: none"> Used by the public to serve process on current and former USPTO employees. Used by the USPTO to accept service for current and former employees who are summoned in their official capacities.
3	Forwarding Service	No Form Associated	<ul style="list-style-type: none"> Used by current or former USPTO employees to forward service of process to the Office of General Counsel. Used by the USPTO to accept service of process forwarded by employees.
4	Employee Testimony and Production of Documents in Legal Proceedings	No Form Associated	<ul style="list-style-type: none"> Used by the public to demand testimony or documents from current or former USPTO employees as part of a legal proceeding. Used by the USPTO to determine whether to authorize the testimony or release the documents.
5	Forwarding Demands	No Form Associated	<ul style="list-style-type: none"> Used by current or former USPTO employees to forward demands for testimony or documentation to the Office of General Counsel. Used by the USPTO to accept demands forwarded by employees.
6	Report of Unauthorized Testimony	No Form Associated	<ul style="list-style-type: none"> Used by current and former USPTO employees to report testimony given in a legal proceeding that was not reviewed by the Office of the General Counsel prior to the proceeding. Used by the USPTO Office of General Counsel to review unauthorized testimony.
7	Possible Indemnification Cases	No Form Associated	<ul style="list-style-type: none"> Used by current and former USPTO employees to report possible indemnification cases to the USPTO in order to start indemnification proceedings. Used by the USPTO Office of General Counsel to determine whether indemnification proceedings are needed.
8	Employee Indemnification	No Form Associated	<ul style="list-style-type: none"> Used by current and former USPTO employees to request indemnification from the Office of General Counsel in instances where a verdict, judgment, or award has been entered against them in a civil action or proceeding related to their official capacities at the USPTO. Used by the USPTO Office of General Counsel to determine whether to grant employee indemnification and to ensure that copies of the verdict, judgment, appeal bond, award or settlement proposal, and the employees' statements have been submitted regarding their actions and whether they have insurance or other sources of indemnification.
9	Tort Claims	No Form Associated	<ul style="list-style-type: none"> Used by the public to file claims against the USPTO under the Federal Tort Claims Act. Used by the USPTO Office of General Counsel to determine whether to settle or deny a claim.

3. Use of Information Technology

Currently, the USPTO does not use automated, electronic, mechanical, or other technologies to collect the information for this collection. The USPTO believes that it

would not be practical to collect all of the information associated with the various legal proceedings electronically. Submitted items can require extensive supporting documentation that generally cannot be supplied electronically (for example, estimates for property damage, medical records/bills, employment/wage certification, death certificates and tax returns). Allowing part of the submission to take place electronically, with hard copy, supporting documentation to follow, would result in a fragmented process. In addition, some individuals may never send the follow-up information which would leave USPTO with open claims that could not be reconciled.

At this time, the USPTO is not collecting the information covered under this collection electronically. As the USPTO expands the use of electronic filing, it may determine that it is feasible for the petitions and demands to be submitted to the USPTO electronically. If the USPTO does determine that these or other documents related to legal processes can be submitted electronically, the USPTO will develop and submit the associated electronic forms or formats for these items to OMB for review and approval as necessary.

The USPTO does not disseminate the information in this collection to the general public, electronically or otherwise.

4. Efforts to Identify Duplication

This information is collected when the public submits petitions to the USPTO to waive legal process rules, demands or subpoenas for testimony or documents, or claims under the Federal Tort Claims Act. The information associated with service of process is collected only when a summons is served on a current or former employee and the employee forwards the necessary information to the Office of General Counsel. The information associated with employee indemnification is collected only when a current or former employee requests indemnification and forwards the necessary documentation to the Office of General Counsel. When current or former USPTO employees report unauthorized testimony or possible cases for indemnification, they provide only the information pertaining to the testimony or indemnification to the Office of the General Counsel. This information is not collected elsewhere and does not result in a duplication of effort.

5. Minimizing Burden to Small Entities

The USPTO does not believe that this collection of information will impose a significant economic impact or put an unnecessary burden on small entities or small businesses. Historically, the USPTO has received very few filings for these proceedings, and very few of the filings involve small businesses or other small entities. The same information is required from every respondent, and this information is not available from any other source.

6. Consequences of Less Frequent Collection

This information is collected only at the initiation of the requestor and is not collected elsewhere. If the information were not collected, the USPTO would not be able to ensure compliance with case law and protect its legal interests related to service of process, demands for employee testimony and production of documents, unauthorized employee testimony, employee indemnification, and claims submitted under the Federal Tort Claims Act. The USPTO also would not be able to consider petitions to waive these rules in the interest of justice in extraordinary situations. Therefore, this collection of information could not be conducted less frequently.

7. Special Circumstances in the Conduct of Information Collection

There are no special circumstances associated with this collection of information.

8. Consultations Outside the Agency

The 60-Day Notice was published in the *Federal Register* on September 19, 2019 (84 Fed. Reg. 182). The comment period ended on September 19, 2019. No public comments were received.

9. Payment or Gifts to Respondents

This information collection does not involve a payment or gift to any respondent.

10. Assurance of Confidentiality

When respondents submit demands in legal proceedings for the testimony of employees or the production of documents regarding information protected by the confidentiality provisions of the Patent Act (35 U.S.C. § 122), the Privacy Act (5 U.S.C. § 552a), the Trade Secrets Act (18 U.S.C. § 1905), or any other confidentiality statute, the demands must satisfy the requirements for disclosure as stated in those statutes and associated rules before the testimony may be given or the documents provided.

The confidentiality of all patent applications is governed by statute (35 U.S.C. § 122) and regulation (37 CFR 1.11 and 1.14). The USPTO has a legal obligation to maintain the confidentiality of the contents of unpublished patent applications and related documents. Upon publication of an application or issuance of a patent, the patent application file is made available to the public, subject to the provisions for providing only a redacted copy of the file contents.

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 respondents, based on the following factors:

- **Respondent Calculation Factors**

The USPTO estimates that it will receive approximately 309 responses per year for this collection, with approximately 10% of these responses submitted by small entities. None of the responses for this collection will be submitted electronically.

These estimates are based on the Agency's long-standing institutional knowledge of and experience with the type of information collected by these items.

- **Burden Hour Calculation Factors**

The USPTO estimates that it will take the public from 5 minutes (0.08 hours) to 6 hours to gather the necessary information, prepare the appropriate documents, and submit the information required for this collection.

These estimates are based on the Agency's long-standing institutional knowledge of and experience with the type of information collected and the length of time necessary to complete responses containing similar or like information.

- **Cost Burden Calculation Factors**

The USPTO estimates that the information in this collection will be prepared by attorneys and former employees at an hourly rate of \$438, except for the requests for employee indemnification. The attorney rates are found in the 2017 Report of the Economic Survey of the America Intellectual Property Law Association (AIPLA). Since the majority of the former employees affected by this collection are attorneys, the estimated attorney hourly rate will be used for former employees as well. Requests for employee indemnification generally come from professional and supervisory staff at an estimated cost of \$85.86 per hour (GS-15, step 1 hourly rate of \$66.05 plus 30% (\$19.81) for benefits and overhead). Using these hourly rates, the USPTO estimates that the total respondent cost burden for this collection will be approximately \$57,463 per year.

Table 3: Burden Hour/Burden Cost to Respondents

Item #	Item	Estimated response times (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a x b)	Rate (\$/hr) (d)	Total Cost (\$/yr) (e) (c x d)
1	Petition to Waive Rules	30 minutes	5	3	\$438.00	\$1,314.00
2	Service of Process	5 minutes	243	20	\$438.00	\$8,760.00
3	Forwarding Service	10 minutes	7	1	\$438.00	\$438.00
4	Employee Testimony and Production of Documents in Legal Proceedings	2 hours	33	66	\$438.00	\$28,908.00
5	Forwarding Demands	10 minutes	10	2	\$438.00	\$876.00
6	Report of Unauthorized Testimony	30 minutes	1	1	\$438.00	\$438.00
7	Report of Possible Indemnification Cases	30 minutes	3	2	\$438.00	\$876.00
8	Employee Indemnification	30 minutes	1	1	\$85.86	\$85.86
9	Tort Claims	6 hours	6	36	\$438.00	\$15,768.00
	Totals	.....	0	131		\$57,463

13. Total Annual (Non-hour) Cost Burden

The total annual (non-hour) cost burden for this collection is estimated to be \$7,621 per year, which includes \$650.00 in fees and \$6,971 in postage.

Fees

This collection has filing fees of \$130 associated with the petition to waive or suspend the legal process rules under 37 CFR 104.3.

Postage Costs

The USPTO estimates that the average first-class postage for a mailed submission, other than a Service of Process, will be 1.45 cents. The USPTO estimates that the average postage for a Service of Process will be \$28.30 (Priority Mail express flat-rate envelope with Certified Mail service and Return Receipt).

Table 4: Filing Fees/Non-hour Cost Burden for Respondents

Item #	Type of Cost	Estimated annual responses	Amount	Totals
1	Petition to Waive Rules – filing fee	5	\$130.00	\$650.00

	Total fees	....	....	\$650.00
1, 3-9	Postage for submissions, other than Service of Process	66	\$1.45	\$95.70
2	Postage for Service of Process	243	\$28.30	\$6,876
	Total postage for mailed submissions	....	....	\$6,971
	Total annual (non-hour) cost burden	....	....	\$7,621

14. Annual Cost to the Federal Government

The USPTO employs GS-15, step 1 to process submissions for this information collection.

The USPTO estimates that the cost of a GS-15, step 1 employee is \$85.86 per hour (GS hourly rate of \$66.05 with 30% (\$19.81) added for benefits and overhead)

Table 4 calculates the burden hours and costs to the Federal Government for processing this information collection:

Table 5: Burden Hour/Burden Cost to the Federal Government

Item #	Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a x b)	Rate (\$/hr) (d)	Total Cost (\$/yr) (e) (c x d)
1	Petition to Waive Rules	1.50	5	8	\$85.86	\$686.88
2	Service of Process	0.08	243	19	\$85.86	\$1,631.34
3	Forwarding Service	0.08	7	1	\$85.86	\$85.86
4	Employee Testimony and Production of Documents in Legal Proceedings	0.50	33	17	\$85.86	\$1,459.62
5	Forwarding Demands	0.08	10	1	\$85.86	\$85.86
6	Report of Unauthorized Testimony	0.50	1	1	\$85.86	\$85.86
7	Report of Possible Indemnification Cases	0.50	3	2	\$85.86	\$171.72
8	Employee Indemnification	1.50	1	2	\$85.86	\$171.72
9	Tort Claims	3.00	6	18	\$85.86	\$1,545.48
	Totals	....	309	69	....	\$5,924

15. Reason for Changes in Burden from the Current Inventory

OMB previously approved this information collection in November 2016 with a total of 309 responses, 131 burden hours, and \$3,734 in annual (non-hour) costs. There have been no interim approvals.

Changes in Respondent Cost Burden

The total respondent cost burden for this collection has increased by \$4,287 (from \$53,169.05 to \$57,463) due to an increase in the estimate for the mean rate for attorneys.

Changes in Responses and Burden Hours

For this renewal, the USPTO estimates that the total annual responses will stay at 309. The USPTO also estimates that the total annual burden hours will increase by 1 to 132; this change is due to more accurate rounding.

Changes in Annual (Non-hour) Costs

The total annual (non-hour) cost burden for this submission of \$7,621 is an increase of \$3,887 from the currently approved total of \$3,734. This increase is due to a change in the postage rates associated with the collection, resulting in increased postage costs.

Table 6: Proposed Changes to Collection

	Currently Approved	Change	Proposed
Cost Burden	\$53,169	\$4,294	\$57,463
Responses	309	0	309
Burden Hours	131	1	132
Annual (non-hourly) costs	\$3,734	\$3,887	\$7,621
Government Cost	\$5,504	\$420	\$5,924

16. Project Schedule

The USPTO does not plan to publish this information for statistical use or for any special purpose.

17. Display of Expiration Date of OMB Approval

There are no USPTO forms associated with this collection. Therefore, the display of the expiration date of OMB approval is not applicable.

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.