

**SUPPORTING STATEMENT**  
**United States Patent and Trademark Office**  
**Fee Deficiency Submissions**  
**OMB CONTROL NUMBER 0651-0070**  
**2021**

**A. JUSTIFICATION**

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the information collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

Under section 10(b) of the Leahy-Smith America Invents Act (“Act”) (See Pub. L. 112-29, 125 Stat. 283 (2011)), eligible small entities shall receive a 50 percent fee reduction from the undiscounted fees for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents. The Act further provides that micro entities shall receive a 75 percent fee reduction from the undiscounted fees for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents.

It is possible for small or micro entity status to be established in good faith, and for a patent applicant or patentee to pay a fee as a small or micro entity in good faith, only to later discover that the entity status was established in error, or to later discover that, through error, the USPTO was not notified of a loss of status entitlement. The USPTO will excuse the error if a deficiency payment and other requirements are submitted in compliance with 37 CFR 1.28(c) or 1.29(k).

This information collection covers the submissions made by patent applicants and patentees to excuse small and micro entity fee payment errors, in accordance with the procedures set forth in 37 CFR 1.28(c) and 1.29(k). Specifically, 37 CFR 1.28(c) provides a procedure by which patent applicants and patentees may be excused for erroneous payments of fees in the small entity amount. 37 CFR 1.29(k) provides a procedure by which patent applicants and patentees may be excused for erroneous payments of fees in the micro entity amount.

The items in this information collection can be submitted online using the Patent Electronic Systems (EFS-Web and Patent Center), as well as on paper, by either mail or hand delivery. The USPTO is therefore accounting for both electronic and paper submissions in this information collection.

Table 1 provides the statutes and regulations authorizing the USPTO to collect the information.

**Table 1: Information Requirements for Fee Deficiency Submissions**

Item No.	Requirement	Statute	Regulations
1	Submissions Under 37 CFR 1.28(c)	35 U.S.C. § 41(h)	37 CFR 1.28
2	Submissions Under 37 CFR 1.29(k)	35 U.S.C. § 123	37 CFR 1.29

**2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new information collection, indicate the actual use the agency has made of the information received from the current information collection.**

This information collection is necessary so that patent applicants and patentees may pay the balance of fees due (i.e., make a fee deficiency payment) when a fee was previously paid in error in a micro or small entity amount. The USPTO needs the information to be able to process and properly record a fee deficiency payment to avoid questions arising later, either for the USPTO or for the applicant or patentee, as to whether the proper fees have been paid in the application or patent.

The information collected, maintained, and used in this information 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 OMB information quality guidelines.

Table 2 outlines how this collection of information is used by the public and the USPTO.

**Table 2: Needs and Uses for Fee Deficiency Submissions**

Item No.	Form and Function	Form No.	Needs and Uses
1	Submissions Under 37 CFR 1.28(c)	No Form	<ul style="list-style-type: none"> <li>Used by patent applicants and patentees to pay the balance of fees due when a fee was previously paid in error in a small entity amount.</li> <li>Used by the USPTO to process and properly record a fee deficiency payment to avoid questions arising later either for the USPTO or for the applicant or patentee as to whether the proper fees have been paid in the application or patent.</li> </ul>
2	Submissions Under 37 CFR 1.29(k)	USPTO/SB/460	<ul style="list-style-type: none"> <li>Used by patent applicants and patentees to pay the balance of fees due when a fee was previously paid in error in a micro entity amount.</li> <li>Used by the USPTO to process and properly record a fee deficiency payment to avoid questions arising later either for the USPTO or for the applicant or patentee as to whether the proper fees have been paid in the application or patent.</li> </ul>

- 3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of information collection. Also describe any consideration of using information technology to reduce burden.**

The items in this information collection may be submitted online using the Patent Electronic Systems (EFS-Web and Patent Center).

Patent Electronic Systems allow customers to file patent applications and associated documents electronically through their standard Web browser without downloading special software, changing their document preparation tools, or altering their workflow processes. Typically, the customer will prepare the documents and then upload them to the USPTO servers using the secure Patent Electronic Systems interface. Patent Electronic Systems offer many benefits to filers, including immediate notification that a submission has been received by the USPTO, automated processing of requests, and avoidance of postage or other paper delivery costs.

- 4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

The information collected is required to process and record a fee deficiency payment when a fee was previously paid in error in a micro or small entity amount. This information is not collected elsewhere and does not result in a duplication of effort.

- 5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.**

This collection of information will not impose a significant economic impact on a substantial number of small entities.

- 6. Describe the consequence to Federal program or policy activities if the information collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

The items in this information collection are collected only when a patent applicant or patentee previously paid a fee in error in a micro or small entity amount. Less frequent collection of this information would impact the USPTO's ability to: (i) process and

properly record a fee deficiency payment; and (ii) answer questions arising later either for the USPTO or for the applicant or patentee as to whether the proper fees have been paid in an application or patent. Thus, this information could not be collected less frequently.

- 7. Explain any special circumstances that would cause an information collection to be conducted in a manner:**
- **requiring respondents to report information to the agency more often than quarterly;**
  - **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
  - **requiring respondents to submit more than an original and two copies of any document;**
  - **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;**
  - **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
  - **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
  - **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**  
**requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

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

- 8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

**Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of information collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

**Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.**

A 60-Day Federal Register Notice was published on August 25, 2021 (86 Fed. Reg. 47478). The comment period ended on October 25, 2021. No public comments were received.

The USPTO has long-standing relationships with groups from whom patent application data is collected, such as the American Intellectual Property Law Association (AIPLA), as well as patent bar associations, independent inventor groups, 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 views have been expressed regarding the present renewal.

**9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

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

**10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy. If the information collection requires a systems of records notice (SORN) or privacy impact assessment (PIA), those should be cited and described here.**

Confidentiality of 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 made available to the public (subject to provisions for providing only a redacted copy of the file contents). Therefore, the information collected by this information collection will necessarily be available to the public when it is either filed in a published application or issued patent, or when it is filed in an application that is later published or issued as a patent.

The Privacy Act of 1974 (P.L. 93-579) requires that individuals submitting these items to USPTO be given certain information in connection with that submission. The USPTO collects this information under authority of 37 CFR 1.28 and 1.29. The purpose of the system is to carry out the duties of the USPTO to grant and issue patents.

Categories of individuals covered by the system include applicants for patent, including inventors, legal representatives for deceased or incapacitated inventors, and other persons authorized by law to make applications for patent. The information in this system of records is used to manage all applicant records including name, citizenship, residence, post office address, and other information pertaining to the applicant's activities in connection with the invention for which a patent is sought.

The information is protected from disclosure to third parties in accordance with the Privacy Act. However, routine uses of this information may include disclosure to the following: to law enforcement and investigation in the event that the system of records indicates a violation or potential violation of law; to a Federal, state, local, or international agency, in response to its request; to an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law; to non-federal personnel under contract to the agency; to a court for adjudication and litigation; to the Department of Justice for Freedom of Information Act assistance; to members of congress working on behalf of an individual; to the Office of Personnel Management for personnel research purposes; to National Archives and Records Administration for records management activities; and to the Office of Management and Budget for legislative coordination and clearance. Failure to provide any part of the requested information may result in an inability to process submissions.

The applicable Privacy Act System of Records Notice for this information is COMMERCE/PAT-TM-7 Patent Application Files, available at Federal Register /Vol. 78, No. 61 / Friday, March 29, 2013 /Notices 19243. <https://www.govinfo.gov/content/pkg/FR-2013-03-29/pdf/2013-07341.pdf>

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.**

None of the items in this information collection are considered to be sensitive.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.
- If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.
- Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included under 'Annual Cost to Federal Government'.

Table 3 and table 4 calculate 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 3,002 total responses from 2,000 respondents per year for this information collection. The respondents for this information collection may be summarized as patent applicants and patentees who: (i) established their status as a small entity in error, or through error did not notify the USPTO of a loss of entitlement to small entity status; or (ii) established their status as a micro entity in error, or through error did not notify the USPTO of a loss of entitlement to micro entity status. Respondents (i) will necessarily be undiscounted entities. Respondents (ii) will either be undiscounted entities or small entities (the rules require an applicant claiming micro entity status to certify that the applicant qualifies as a small entity). Therefore, all the respondents are considered to be small entities.

Approximately 99% of the responses for this information collection will be submitted electronically.

- **Burden Hour Calculation Factors**

The USPTO estimates that it will take the public approximately 2 hours to submit the items in this information collection, including the time to gather the necessary information, prepare the appropriate form or petition, and submit the completed documents to the USPTO. Using these burden factors, USPTO estimates that the total respondent hourly burden for this information collection is 6,004 hours

per year.

- **Cost Burden Calculation Factors**

The USPTO uses a professional rate of \$435 per hour for the respondent cost burden calculations, which is the mean rate of intellectual property attorneys in private firms as shown in the 2021 *Report of the Economic Survey* published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association (AIPLA). Using these hourly rates, the USPTO estimates that the total respondent cost burden for this information collection is \$2,611,740 per year.

**Table 3: Total Hourly Burden For Private Sector Respondents**

Item No.	Item	Estimated Annual Respondents	Responses per Respondent	Estimated Annual Responses	Estimated Time For Response (hours)	Estimated Burden (hour/year)	Rate <sup>1</sup> (\$/hour)	Estimated Annual Respondent Cost Burden
		(a)	(b)	(a) x (b) = (c)	(d)	(c) x (d) = (e)	(f)	(e) x (f) = (g)
1	Submissions Under 37 CFR 1.28(c)	1,455	1.5	2,183	2	4,366	\$435	\$1,899,210
2	Submissions Under 37 CFR 1.29(k)	485	1.5	728	2	1,456	\$435	\$633,360
	<b>Totals</b>	<b>1,940</b>	<b>---</b>	<b>2,911</b>	<b>---</b>	<b>5,822</b>	<b>---</b>	<b>\$2,532,570</b>

**Table 4: Total Hourly Burden For Individuals or Households Respondents**

Item No.	Item	Estimated Annual Respondents	Responses per Respondent	Estimated Annual Responses	Estimated Time For Response (hours)	Estimated Burden (hour/year)	Rate <sup>2</sup> (\$/hour)	Estimated Annual Respondent Cost Burden
		(a)	(b)	(a) x (b) = (c)	(d)	(c) x (d) = (e)	(f)	(e) x (f) = (g)
1	Submissions Under 37 CFR 1.28(c)	45	1.5	68	2	136	\$435	\$59,160
2	Submissions Under 37 CFR 1.29(k)	15	1.5	23	2	46	\$435	\$20,010
	<b>Totals</b>	<b>60</b>	<b>---</b>	<b>91</b>	<b>---</b>	<b>182</b>	<b>---</b>	<b>\$79,170</b>

**13. Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected on the burden worksheet).**

<sup>1</sup> 2021 Report of the Economic Survey, published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association (AIPLA); pg. F-27. The USPTO uses the average billing rate for intellectual property attorneys in private firms which is \$435 per hour.

<sup>2</sup> 2021 Report of the Economic Survey, published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association (AIPLA); pg. F-27. The USPTO uses the average billing rate for intellectual property attorneys in private firms which is \$435 per hour.



- **The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**
- **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collections services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
- **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

There are no capital start-up, maintenance, or recordkeeping costs for this information collection, nor does this information collection have filing fees. There is, however, a non-cost burden in the form of postage that results in an estimated \$242 in respondent (non-hourly) cost burdens.

Although the USPTO prefers that the items in this information collection be submitted electronically, responses may be submitted by mail through the United States Postal Service (USPS). The USPTO estimates that 1% of the 3,002 items will be submitted in the mail resulting in 30 mailed items. The USPTO estimates that the average standard postage cost for a mailed submission, using a Priority Mail 2-day flat rate legal envelope, will be \$8.25. Therefore, the USPTO estimates the total mailing costs for this information collection at \$248.

**14. Provide estimates of annualized costs to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.**

The USPTO employs GS-7, step 1 employees to process the materials in this information collection.

The USPTO estimates that the cost of a [GS-7, step 1](#)<sup>3</sup> employee is \$30.62 per hour (\$23.55 with 30% (\$7.07) added for benefits and overhead).

The USPTO estimates that it takes the employees approximately 15 minutes (0.25 hours) to process the materials submitted as a part of this information collection.

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

**Table 5: Burden Hours/Burden Costs to the Federal Government for Fee Deficiency Submissions**

Item No.	Item	Responses (yr)	Hours	Burden (hrs/yr)	Rate (\$/hr)	Total Cost (\$/yr)
		(a)	(b)	(a) x (b) = (c)	(d)	(c) x (d) = (e)
1	Submissions Under 37 CFR 1.28(c)	2,251	0.25	563	\$30.62	\$17,239
2	Submissions Under 37 CFR 1.29(k)	751	0.25	188	\$30.62	\$5,757
	<b>Totals</b>	---		<b>751</b>	---	<b>\$22,996</b>

**15. Explain the reasons for any program changes or adjustments reported on the burden worksheet.**

	Requested	Program Change Due to New Statute	Program Change Due to Agency Discretion	Change Due to Adjustment in Agency Estimate	Change Due to Potential Violation of the PRA	Previously Approved
Annual Number of Responses	3,002	0	0	502	0	2,500
Annual Time	6,004	0	0	1,004	0	5,000

<sup>3</sup> [https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2021/DCB\\_h.pdf](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2021/DCB_h.pdf)

Burden (Hr)						
Annual Cost Burden (\$)	248	0	0	-87	0	335

Change in Responses and Hourly Burden due to Adjustment in Agency Estimate

The total number of responses has increased by 502 due to estimated fluctuations in the number of responses/submissions in this information collection. This increase in the number of responses results in an increase of 1,004 hours in the annual time burden estimates.

Change in Annual (Non-hour) Costs due to Adjustment in Agency Estimate

For this renewal, the USPTO estimates that the total annual (non-hour) costs will decrease by \$87 from the previous approval. This decrease is due to estimated fluctuations in submissions and a decrease in the number of respondents submitting their information by mail.

**16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.**

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

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.**

The forms in this information collection will display the OMB Control Number and the expiration date of OMB approval.

**18. Explain each exception to the topics of the certification statement identified in “Certification for Paperwork Reduction Act Submissions.”**

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.