

SUPPORTING STATEMENT
United States Patent and Trademark Office
Patent Law Treaty
OMB CONTROL NUMBER 0651-0073
2023

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.

The Patent Law Treaties Implementation Act of 2012 (PLTIA) implements the provisions of the Patent Law Treaty (PLT) in title II. PLT Article 13 provides for the restoration of the right of priority where there is a failure to timely claim priority to the prior application, and also where there is a failure to file the subsequent application within 12 months of the filing date of the priority application.

The United States Patent and Trademark Office (USPTO) rules of practice are consistent with the PLT and title II of the PLTIA. Section 201(c) of the PLTIA amended 35 U.S.C. 119 to provide that the 12-month periods set forth in 35 U.S.C. 119(a) and (e) may be extended by an additional 2 months if the delay in filing an application claiming priority to a foreign application or the benefit of a provisional application within that 12-month period was unintentional.

The information in this information collection is necessary so that patent applicants and/or patentees may seek restoration of the right of priority to a prior-filed foreign application or of the right to the benefit of a prior-filed provisional application. The USPTO will use the petition to restore the right of priority to a prior filed foreign application or the right to the benefit of a prior-filed provisional application to determine whether the applicant has satisfied the conditions of the applicable statute (35 U.S.C. 119) and regulation (37 CFR 1.55(c) or 1.78(b)).

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

Table 1: Information Requirements

Item No.	Requirement	Statute	Regulation
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1	Petition to Restore the Right of Priority under 37 CFR 1.55(c)	35 U.S.C. 119(a)	37 CFR 1.55(c)
	Or Petition to Restore the Benefit of a Prior-Filed Provision Application under 37 CFR 1.78(b)	35 U.S.C. 119(e)	37 CFR 1.78(b)

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.

The public uses this information collection to seek restoration of the right of priority to a prior-filed foreign application or of the right to the benefit of a prior-filed provisional application. The American Invents Act introduced these filing options in 2012. Patent fillers have increased their usage of these petitions as the word as spread about the effectiveness of these options. In response, USPTO created dedicated forms for these petitions in 2022; an action expected to further increase interest and use of these items.

The information in this information collection can be submitted electronically through the USPTO patent electronic filing system as well as on paper. The USPTO is therefore accounting for both electronic and paper submissions in this information collection.

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

Item No.	Form and Function	Form No.	Needs and Uses
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1	Petition to Restore the Right of Priority under 37 CFR 1.55(c) Or Petition to Restore the Benefit of a Prior-Filed Provisional Application under 37 CFR 1.78(b)	PTO/SB/459	<ul style="list-style-type: none"> • Used by patent applicants and/or patentees to petition under 37 CFR 1.55(c) to restore the right of priority to a prior-filed foreign application in a subsequent application. • Used by the USPTO to determine whether the applicant and/or patentee has satisfied the conditions of the applicable statute (35 U.S.C. 119) and regulation (37 CFR 1.55(c)). <p style="text-align: center;">Or</p> <ul style="list-style-type: none"> • Used by patent applicants and/or patentees to petition under 37 CFR 1.78(b) to restore the benefit of a prior-filed provisional application in a subsequent application. • Used by the USPTO to determine whether the applicant and/or patentee has satisfied the conditions of the applicable statute (35 U.S.C. 119) and regulation (37 CFR 1.78(b)).
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3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological information 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 activity. Also describe any consideration of using information technology to reduce burden.

The items in this information collection may be submitted online using the USPTO patent electronic filing system.

The USPTO patent electronic filing system allows 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 as standard PDF files and then upload them to the USPTO services using the secure USPTO patent electronic filing system interface. The USPTO patent electronic filing system offers 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 cost.

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 in order to restore the right of priority to a prior-filed foreign application, or the right to the benefit of a prior-filed provisional application. 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. The same information will be required from every member of the public in the applicable situation and will not be available from any other source. The USPTO estimates that 20% of this activity will be completed by small entities.

For both petitions in this information collection, a grantable petition requires payment of the petition fee set forth in 37 CFR 1.17(m). 37 CFR 1.17(m) provides an undiscounted fee of \$2,100, a small entity discounted fee of \$1,050, and a micro entity discounted fee of \$525.

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 information in this information collection is collected only when a patent applicant and/or patentee seeks restoration of the right of priority to a prior-filed foreign application or of the right to benefit of a priority-filed provisional application. Less frequent collection of this information would deny patent applicants and/or patentees their right under the statute to have restored the right of priority to a prior-filed foreign application or the right to the benefit of a prior-filed provisional application. 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 information collection.

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 this activity, 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.

The 60-Day Notice was published in the *Federal Register* on November 17, 2022 (87 FR 69011).¹ The comment period ended on January 17, 2023. No comments were received.

In addition, the USPTO has long-standing relationships with groups from whom patent application information is collected, such as the American Intellectual Property Law Association, as well as patent bar associations, independent inventor groups, and users of our public search facilities. Views expressed by these groups are considered in developing proposals for information collection requirements. There have been no comments or concerns expressed by these or similar organizations concerning the time to provide the information required under this program.

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.

¹ <https://www.govinfo.gov/content/pkg/FR-2022-11-17/pdf/2022-25000.pdf>.

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 applicants 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 filed in a published application or issued patent, or, if it is filed in an application that has yet to publish or issue as a patent, when the application publishes or issues as a patent.

Applications and petitions filed through the USPTO patent electronic filing system are maintained in confidence as required by 35 U.S.C. 122(a) until the application is published or a patent is issued. The confidentiality, security, integrity, authenticity, and non-repudiation of patent applications submitted electronically through the USPTO patent electronic filing system are maintained using digital certificates for registered users. Applications electronically-filed by registered and non-registered users are protected using Transport Layer Security (TLS) or Secure Socket Layer (SSL) protocols. The USPTO posts issued patents and application publications on its website. The USPTO patent electronic filing system permits only authorized individuals to access information about pending patent applications and maintains the confidentiality and integrity of the information as it is transmitted over the Internet. Information for issued patents, certificates of correction, and reissue applications is available to the general public.

The Privacy Act of 1974 (P.L. 93-579) requires that an applicant be given certain information in connection with submissions related to a patent application or issued patent. The USPTO collects information under authority of 35 U.S.C. 2. The purpose of the USPTO's system of records is to carry out the duties of the USPTO to examine patent applications and issue patents, including the collection of the inventor's oath or declaration under 35 U.S.C. 115. 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 or has been granted.

The information, in this system of records, is protected from disclosure to third parties in accordance with the Privacy Act. However, routine uses of this information may include publication under 35 U.S.C. 112(a) as noted above, and disclosure to the following: to law enforcement 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 (FOIA) assistance; to a Member of Congress working on behalf of an individual to whom the record pertains, when the individual has requested the Member's assistance with respect to the subject matter of the record; to the Office of Personnel Management (OPM) for personnel research purposes; to National Archives and Records Administration for inspection of records; and to the Office of Management and Budget (OMB) for legislative coordination and clearance. Failure to provide any part of the requested information may result in an inability to process requests related to patent applications or issued 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 applicable Privacy Act System of Records Notice for this information is COMMERCE/PAT-TM-7 Patent Application Files, available at the Federal Register at 78 FR 19243 (March 29, 2013).²

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 required information in this information collection is 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.**

² <https://www.govinfo.gov/content/pkg/FR-2013-03-29/pdf/2013-07341.pdf>.

- **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 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 800 total responses per year for this information collection, with approximately 20% of these responses submitted by small entities. It is expected that most of the respondents in this information collection will be from private sector entities (firms, businesses, and non-profits), but that about 3% of the respondents will be individuals and households (including pro-se filers). Approximately 99% of the total responses for this information 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 1 hour, depending on the complexity and type of filing, to gather the necessary information, prepare the appropriate documents, and submit the information to the USPTO. 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.

Using these burden factors, USPTO estimates that the total respondent hourly burden for this information collection is 800 hours per year.

- **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 \$435, except for the requests for employee indemnification. The attorney rates are found in the 2021 Report of the Economic Survey of the America Intellectual Property Law Association (AIPLA). Based on the Agency's long-standing institutional knowledge of and experience with the type of information collected, the Agency

expects \$435 is an accurate estimate of the cost per hour to collect this information. Using this hourly rate, the USPTO estimates that the total respondent cost burden for this information collection is \$348,000 per year.

Table 3: Burden Hour/Burden Cost to 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 ³ (\$/hour)	Estimated Annual Respondent Cost Burden
		(a)	(b)	(a) X (b) = (c)	(d)	(c) x (d) = (e)	(f)	(e) x (f) = (g)
1	Petition to Restore the Right of Priority under 37 CFR 1.55(c)	780	1	780	1	780	\$435	\$339,300
	Or Petition to Restore the Benefit of a Prior-Filed Provisional Application under 37 CFR 1.78(b)							
	PTO/SB/459							
	Totals	780	---	780	---	780	---	\$339,300

Table 4: Burden Hour/Burden Cost to Individual and Household Respondents

Item No.	Item	Estimated Annual Respondents	Responses per Respondent	Estimated Annual Responses	Estimated Time for Response (Hours)	Estimated Burden (hour/year)	Rate ⁴ (\$/hour)	Estimated Annual Respondent Cost Burden
		(a)	(b)	(a) X (b) = (c)	(d)	(c) x (d) = (e)	(f)	(e) x (f) = (g)
1	Petition to Restore the Right of Priority under 37 CFR 1.55(c)	20	1	20	1	20	\$435	\$8,700
	Or Petition to Restore the Benefit of a Prior-Filed Provisional Application under 37 CFR 1.78(b)							
	PTO/SB/459							
	Totals	20	---	20	---	20	---	\$8,700

³ 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. (<https://www.aipla.org/home/news-publications/economic-survey>).

⁴ Ibid.

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).

- **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.**

This information collection has no capital start-up, maintenance, or record keeping costs. However, there are respondent costs in the form of fees and postage. The total annual (non-hour) cost burden for this collection is estimated to be \$1,464,824 per year, which includes \$1,464,750 in fees and \$74 in postage.

Fees

For both petitions in this information collection, a grantable petition requires payment of the petition fee set forth in 37 CFR 1.17(m). 37 CFR 1.17(m) provides an undiscounted fee of \$2,100, a small entity discounted fee of \$1,050, and a micro entity discounted fee of \$525. These fees were increased by the

Table 5: Filing Fees/Non-hour Cost Burden to Respondents

Item No.	Information Collection Instrument	Estimated Annual Responses (a)	Amount (b)	Totals (a) x (b) = (c)
1	Grantable Petition to Restore the Right of Priority under 37 CFR 1.55(c) (undiscounted entity)	310	\$2,100	\$651,000
1	Grantable Petition to Restore the Right of Priority under 37 CFR 1.55(c) (small entity)	65	\$1,050	\$68,250
1	Grantable Petition to Restore the Right of Priority under 37 CFR 1.55(c) (micro entity)	25	\$525	\$13,125
1	Grantable Petition to Restore the Benefit of a Prior-Filed Provisional Application under 37 CFR 1.78(b) (undiscounted entity)	310	\$ 2,100	\$651,000
1	Grantable Petition to Restore the Benefit of a Prior-Filed Provisional Application under 37 CFR 1.78(b) (small entity)	65	\$1,050	\$68,250
1	Grantable Petition to Restore the Benefit of a Prior-Filed Provisional Application under 37 CFR 1.78(b) (micro entity).	25	\$525	\$13,125
	Total Fees	---	---	\$1,464,750

Postage Costs

The USPTO estimates that the average postage cost for a paper submission will be \$9.25 (USPS Priority Mail flat rate envelope) and that approximately 8 submissions will be mailed to the USPTO per year, for a total of \$74.

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 expects that approximately 1% of the responses 900 in this information collection will be submitted in the mail, resulting in 9 mailed submissions. The USPTO estimates that the average postage cost for a mailed submission, using a Priority Mail 2-day flat rate legal envelope, will be \$9.25. Therefore, the USPTO estimates that the postage costs for the mailed submissions in this information collection will total \$74.

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 estimates that it takes USPTO staff approximately 18 minutes (0.30 hours) to process the information in this information collection, depending on the type and amount of information submitted.

The USPTO estimates that it takes a GS-7, step 1, employee approximately 18 minutes (0.30 hours) on average to process the items in this information collection. The hourly rate for a GS-7, step 1 employee is currently \$24.27, according to the U.S. Office of Personnel Management's (OPM's) wage table, including locality pay for the Washington, DC area. When 30% is added to account for a fully loaded hourly rate (benefits and overhead), the rate per hour for a GS-7, step 1, employee is \$31.55 (\$24.27 with \$7.28 added for benefits and overhead).

Table 6 calculates the burden hours and costs to the Federal Government for processing this information collection.

Table 6: Burden Hour/Cost to the Federal Government

Item No.	Item	Responses (yr) (b)	Hours (a)	Burden (hrs/yr) (a) x (b) (c)	Rate ⁵ (\$/hr) (d)	Total Cost (\$/hr) (c) x (d) (e)
1	Petition to Restore the Right of Priority under 37 CFR 1.55(c)	800	0.30	240	\$31.55	\$7,572
	Or Petition to Restore the Benefit of a Prior-Filed Provisional Application under 37 CFR 1.78(b)					
	Total	800		240	- - -	\$7,572

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	800	0	0	150	0	650

⁵ https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2022/DCB_h.pdf.

Responses						
Annual Time Burden (Hr)	800	0	0	150	0	650
Annual Cost Burden (\$)	1,464,824	0	69,750	265,020	0	1,130,054

Estimated Annual Responses and Hourly Burdens due to Adjustment in Agency Estimate

The increase in the number of responses (+150) and burden hours (+150) is due to the estimated normal fluctuation in the number of responses for the items remaining in this information collection. The American Invents Act introduced these filing options in 2012. Patent fillers have increased their usage of these petitions as the word has spread about the effectiveness of these options. In response, USPTO created dedicated forms for these petitions in 2022; an action expected to further increase use of these items. The USPTO continues to increase its estimated number of respondents to account for this trend.

Change in Annual (Non-hour) Costs due to Program Change due to Agency Discretion

As part of this renewal, USPTO is also updating the fee associated with these petitions. That fee change results in \$69,750 being added to the information collection.

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

The USPTO estimates an increase (+\$265,000) for the total annual (non-hour) costs due to increases in the number of respondents who are filling petitions and paying the associated costs for those items. Likewise, USPTO increased its estimates for postage costs to reflect more accurate respondent burden which adds (+\$20).

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 documents in this information collection will display the OMB Control Number and the OMB expiration date.

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

This information collection does not include any exceptions to the certificate statement.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection of information does not employ statistical methods.