SUPPORTING STATEMENT
United States Patent and Trademark Office
Patent Trial and Appeal Board (PTAB) Appeals
OMB CONTROL NO. 0651-0063
2020

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 Trial and Appeal Board (PTAB or Board) is established by statute under 35 U.S.C. 6 (American Inventor Protection Act of 1999[1]). This statute directs, in relevant part, that PTAB shall "on written appeal of an applicant, review adverse decisions of examiners upon applications for patents pursuant to section 134(a)." PTAB has the authority, under 35 U.S.C. 134 and 306 to decide appeals in applications and ex parte reexamination proceedings, and under pre-AIA sections of the Patent Act, i.e., 35 U.S.C. 134 and 315, to decide appeals in inter partes reexamination proceedings. In addition, 35 U.S.C. 6 establishes the membership of PTAB as the Director, the Deputy Director, the Commissioner for Patents, the Commissioner for Trademarks, and the Administrative Patent Judges. Each appeal is decided by a merits panel of at least three members of the Board.

The Board's responsibilities under the statute include the review of ex parte appeals from adverse decisions of examiners in those situations where a written appeal is taken by a dissatisfied applicant or patent owner. In inter partes reexamination appeals, PTAB reviews an examiner's decisions adverse to a patent owner or a third-party requester. PTAB's opinions and decisions for publicly available files are published on the USPTO Web site.

The items associated with this information collection include appeals in applications and ex parte reexamination proceedings, and appeals in inter partes reexamination proceedings that are governed by the regulations in 37 CFR 41. Failure to comply with the appropriate regulations may result in dismissal of the appeal or denial of entry of the submission.

The name of this information collection is being changed from "PTAB Actions" to "PTAB Appeals" to better reflect the content of the information collection. In addition, this renewal adds three items currently approved in another information collection (0651-0031: Patent Processing) to include all items related to patent appeals in a single information collection. These three items are: Notice of Appeal, Amendment to Cancel Claims During an Appeal, and Request for Oral Hearing. A separate change request

[1] https://www.uspto.gov/patent/laws-and-regulations/american-inventors-protection-act-1999

will be submitted to remove these three items from that information collection (0651-0031: Patent Processing).

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 information in this information collection can be submitted by mail, hand delivery, or facsimile when an applicant files a brief, petition, amendment to cancel claims during an appeal, or request. These papers can also be filed as attachments through the USPTO's Web-based Electronic Filing System (EFS-Web).

There are some forms associated with these items. All of the items are governed by rules in 37 CFR Part 41. Failure to comply with the appropriate rules may result in dismissal of the appeal or denial of entry of the paper.

Ex parte appeals from adverse decisions by patent examiners in applications for patents and in reexamination proceedings filed pursuant to Chapter 30 of 35 U.S.C. are provided for by 35 U.S.C. §§ 134 and 306. The rules governing *ex parte* appeals are found at 37 CFR 41.1 through 41.54. The rules governing *inter partes* reexamination appeals are found at 37 CFR 41.60 through 41.81. Chapter 1200 of *The Manual of Patent Examining Procedure*[2] sets forth the current procedures for appellants and patent examiners to follow in *ex parte* appeals. Sections 2273 through 2279 of *The Manual of Patent Examining Procedure* sets forth additional procedures for appellants and patent examiners to follow in *ex parte* appeals in a reexamination proceeding. Sections 2674 through 2683 of *The Manual of Patent Examining Procedure* sets forth additional procedures for appellants, respondents, and patent examiners to follow in an *inter partes* reexamination proceeding.

The PTAB disseminates certain information that it collects through various publications and databases. This information includes opinions, binding precedent, final decisions, and judgments in appeals.

An opinion of the PTAB made precedential by the procedures contained in the current or earlier versions of the Standard Operating Procedure 2 is considered to be binding precedent. Other PTAB opinions that are published or otherwise disseminated are not considered binding precedent of the PTAB.

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 USPTO information quality guidelines.

Table 1 lists the specific statutes and regulations authorizing the USPTO to collect this information and outlines how this information is used by the public and by the USPTO:

[2] https://www.uspto.gov/web/offices/pac/mpep/index.html

Table 1: Information Requirements and Needs and Uses of Information Collected

IC #	Requirement	Statute	Regulation	Form #	Needs and Uses
1	Notice of Appeal	35 U.S.C. § 134	37 CFR 41.31	PTO/AIA/31 PTO/SB/31	• Used by the applicant to notify the PTAB of the intent to appeal. • Used by the PTAB to manage schedules and dockets.
2	Appeal Brief	35 U.S.C. § 134	37 CFR 41.37	No Form Associated	• Used by the applicant to set forth the claims, issues, and arguments on appeal to the PTAB. • Used by the PTAB to aid in rendering a decision on the claims, issues, and arguments submitted by the applicant.
3	Amendment	35 U.S.C. § 134	37 CFR 41.33	No Form Associated	• Used by the applicant to cancel pending, rejected claims that applicant does not wish to be considered on appeal by the PTAB. Used by the PTAB to determine which claims are on appeal.
4	Reply Brief	35 U.S.C. § 134	37 CFR 41.41	No Form Associated	• Used by the applicant to respond to the examiner's answer. • Used by the PTAB to aid in rendering a decision on the claims, issues, and arguments submitted by the applicant.
5	Request for Rehearing Before the PTAB	35 U.S.C. § 134	37 CFR 41.52	No Form Associated	• Used by the applicant to request reconsideration of a PTAB decision. • Used by the PTAB to decide whether to grant or deny a request for reconsideration of a decision.
6	Petitions to the Chief Administrative Patent Judge Under 37 CFR 41.3	35 U.S.C. § 134	37 CFR 41.3	No Form Associated	• Permits parties to petition the Chief Administrative Patent Judge on matters pending bfore the PTAB. • Used by the PTAB to determine whether the necessary information has been provided to grant the petition.
7	Request for Oral Hearing	35 U.S.C. § 134	37 CFR 41.47	PTO/AIA/32 PTO/SB/32	• Used by applicant in circumstances when applicant deems it necessary for a proper presentation of the appeal • Used by the PTAB to manage schedules and dockets.

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 collection. Also describe any consideration of using information technology to reduce burden.

The USPTO collects the submissions in this information collection via Electronic Filing System (EFS-Web), paper, by mail, facsimile, or hand delivery... The Legal Framework

for EFS-Web[3], outlines which types of patent applications and associated documents can and cannot be submitted electronically. As for facsimile submission, it is governed by 37 CFR 1.6(d). The USPTO does not use any other automated, mechanical, or other technological collection techniques to collect the information in this information collection.

EFS-Web 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 and other paper delivery costs. After the document has been successfully submitted through EFS-Web, customers will receive an acknowledgment receipt that lists the time and date stamp stating when the document was submitted to the USPTO, an application number, a confirmation number, and other critical information, such as the EFS ID, a listing of the files and documents associated with the submission, and page counts for the files and documents. This receipt is the legal equivalent of a postcard in the postcard receipt practice used for patent application documents that are filed in paper. The USPTO recommends that customers print the electronic acknowledgement receipt to keep with their records.

PTAB reviews the documents filed via EFS-Web using an internal viewer known as DAV (Docket and Application Viewer) when appealed cases are in PTAB's jurisdiction. The PTAB has deployed an electronic system known as PTAB E2E to track the status of the patent appeal cases. PTAB E2E allows the PTAB to track the status of the patent appeal cases and also provides relevant information pertaining to these cases. This is an internal system that manages the workflow throughout PTAB. PTAB E2E is not designed to disseminate information or to provide status updates to the public regarding patent appeal cases.

PTAB's opinions and decisions are usually publicly available and published on the USPTO's website. Precedential and informative opinions are published on PTAB's home page through the USPTO's website. In late 1997, PTAB started disseminating opinions in support of PTAB's final decisions appearing in issued patents, reissue applications, and reexamination proceedings through the USPTO's electronic Freedom of Information Act (e-FOIA) website. Beginning in 2001, with the implementation of 18-month publication of applications under the American Inventors Protection Act[4] of 1999, the PTAB also began posting final decisions for published applications through the e-FOIA website.

The public has unrestricted access to view publically available documents and decisions via the PTAB Bulk data site and e-FOIA site.

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.

[3] http://www.uspto.gov/patents/process/file/efs/guidance/New legal framework.jsp

[4] https://www.uspto.gov/patent/laws-and-regulations/american-inventors-protection-act-1999

This information is collected only when an applicant (or a patent owner) submits information for an *ex parte* appeal before the PTAB. This information is not collected elsewhere. Therefore, this information collection does not create a duplication of effort or collection of data.

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

The same information is required from every applicant, and this information is not available from any other source. This information collection involves items which require the payment of fees by customers who may qualify as small entities or micro entities.

Pursuant to section 10(b) of the Leahy-Smith America Invents Act (AIA)[5], the USPTO provides a 50% reduction in the fees for certain filings by small entity applicants, such as independent inventors, small businesses, and nonprofit organizations who meet the definition of a small entity provided at 37 CFR 1.27. Also pursuant to section 10(b) of the AIA, the USPTO provides a 75% reduction in the fees set or adjusted under section 10(a) of the Act for certain filings by applicants who meet the definition of a micro entity provided at 35 U.S.C. § 123 and 37 CFR 1.29.

No significant burden is placed on small or micro entities, in that small entities must only identify themselves as such in order to obtain these benefits, and micro entities must only provide a certification of micro entity status. No formal statement is required. An assertion or certification of small or micro entity status, respectively, only needs to be filed once in an application or patent (although a fee may be paid in the micro entity amount only if the applicant or patentee is still entitled to micro entity status on the date the fee is paid).

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.

This information is collected only when an applicant (or patent owner) files an amendment, a notice of appeal, an appeal brief, a reply brief, a request for oral hearing, a request for rehearing before the PTAB, or a petition to the Chief Administrative Patent Judge. This information is not collected elsewhere. Therefore, this collection of information could not be conducted less frequently. If this information was not collected, the PTAB could not ensure that an applicant (or patent owner) has submitted all of the information (and the applicable fees) necessary to initiate an appeal or to determine whether a request or a petition should be granted. If this information was not collected, the USPTO could not comply with the requirements of 35 U.S.C. § 134 and 37 CFR Part 41.

[5] https://www.uspto.gov/sites/default/files/aia_implementation/20110916-pub-l112-29.pdf

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 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.

The 60-Day Federal Register Notice was published on April 20, 2020 (85 Fed Reg. 21838). The public comment period ended on June 19, 2020. No public comments were received.

In addition, 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.

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. Response to this information collection is necessary to initiate appeal proceedings, to prepare the briefs, to request a rehearing before PTAB, and to petition the Chief Administrative Patent Judges.

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 records involved in appeal proceedings is governed by statute (35 U.S.C. § 122) and regulation (37 CFR 1.11 and 1.14). The PTAB publishes certain opinions and decisions concerning decided cases. Public availability to records involved in terminated and pending cases varies, depending upon statute and regulation.

To further define the boundaries of the confidentiality of patent applications in light of the 18-month publication of patent applications introduced under the American Inventors Protection Act of 1999, the USPTO amended 37 CFR 1.14 to maintain the confidentiality of applications that have not been published as a U.S. patent application. As amended, 37 CFR 1.14 provides that the public can obtain status information about the application, such as whether the application is pending, abandoned, or patented, whether the application has been published under 35 U.S.C. § 122(b), and the application "numerical identifier." This information can be supplied to the public under certain conditions. The public can also receive copies of an application-as-filed and the file wrapper, as long as it meets certain criteria. PTAB decisions relating to such applications can be published.

Applications filed through EFS-Web 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 EFS-Web are maintained using PKI technology and digital certificates for registered users. Applications electronically-filed by non-registered users are protected using TLS or SSL protocols. The USPTO posts issued patents and application publications on its Web site. The information covered under this information collection will not be released to the public unless it is part of an issued patent or application publication. Patent applicants and/or their designated

representatives can view the current status of their patent application through the Patent Application Information Retrieval (PAIR) system. Access to patent applications that are maintained in confidence under 35 U.S.C. § 122(a) is restricted to the patent applicant and/or their designated representatives by the use of digital certificates, which maintain the confidentiality and integrity of the information transmitted over the Internet. The public can view the status and history information for published applications and granted patents via PAIR.

This information collection contains information that is subject to the Privacy Act.

PTAB records are covered by the Systems of Records Notices for Parties Involved in Patent Interference Proceedings (Commerce/PAT-TM-6; 78 FR 19247 published on March 29, 2013). This SORN covers all records relating to the declaration, conduct, and termination of interference proceedings, including, but not limited to: Preliminary statements, motions, testimony, and settlement agreements. The data contained in the records may include information relating to an applicant's, a patentee's, or a witness's name, age, citizenship, residence, educational and work background, physical and mental health, activities relating to conception of the contested subject matter, and other matters which may arise during the conduct of the interference proceeding or in connection with any agreements made by the parties relative to the interference proceeding.

Patent application files may be involved in PTAB decisions and procedures and are also covered by a System of Records Notice for Patent Application Files (COMMERCE/PAT-TM-7; 78 FR 19243 published on March 29, 2013). These SORNs identify the categories of individuals in the system containing applicants for patent, including inventors, legal representatives for deceased or incapacitated inventors, and other persons authorized by law to make applications for patent.

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 of a sensitive nature.

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 2 calculates the burden hours and costs of this information collection to the public, based on the following factors:

- **Respondent Calculation Factors**
  The USPTO projects that 22,664 respondents to this information collection will submit 48,886 responses per year. The USPTO estimates that approximately 24% (11,733) of these responses will be from small entities and an additional 5% (2,444) of these responses will be from micro entities. The USPTO also estimates that approximately 98% (47,908) of the responses will be filed 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 takes the public approximately 0.5 to 32 hours to complete the briefs, amendments, requests, and petitions in this information collection, depending on the complexity of the request. This includes the time to gather the necessary information, prepare the brief, petition, and other papers, and submit the completed request to the USPTO. The USPTO assumes that, on balance, it takes the same amount of time to gather the necessary information, prepare the brief, petition, and other papers, and submit it to the USPTO, whether the applicant submits it in paper form or electronically.

  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 expects that all of the information in this information collection will be prepared by an attorney. The USPTO uses a professional rate of $400 per hour for respondent cost burden calculations, which is the mean rate for

attorneys in private firms as shown in the 2019 Report of the Economic Survey, published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association (AIPLA)[6].

Based on the Agency's long-standing institutional knowledge of and experience with the type of information collected, the Agency estimates $226,370,800 is an accurate estimate of the estimated hourly cost to collect this information.

Table 2: Burden Hour/Burden Cost to Respondents (Private Sector)

Item #	Item	Respondents	Responses (yr) (a)	Hours (b)	Burden (hrs/yr) (c) (a) x (b)	Rate ($/hr) (d)	Total Cost ($/hr) (e) (c) x (d)
1	Notice of Appeal	21,531	21,531	.5	10,766	$400	$4,306,400
2	Appeal Brief	Same as item 1	15,188	32	486,016	$400	$194,406,400
3	Amendment to Cancel Claims	Same as item 1	1,495	2	2,990	$400	$1,196,000
4	Reply Brief	Same as item 1	7,060	5	35,300	$400	$14,120,000
5	Request for Rehearing Before the PTAB	Same as item 1	390	5	1,950	$400	$780,000
6	Petitions to the Chief Administrative Patent Judge Under 37 CFR 41.3	Same as item 1	65	4	260	$400	$104,000
7	Request for Oral Hearing	Same as item 1	712	.5	356	$400	$142,400
	Totals	**21,531**	**46,441**		**537,638**		**$215,055,200**

Table 3: Burden Hour/Burden Cost to Respondents (Individuals and Households)

Item #	Item	Respondents	Responses (yr) (a)	Hours (b)	Burden (hrs/yr) (c) (a) x (b)	Rate ($/hr) (d)	Total Cost ($/hr) (e) (c) x (d)
1	Notice of Appeal	1,133	1,133	.5	567	$400	$226,800
2	Appeal Brief	Same as item 1	799	32	25,568	$400	$10,227,200
3	Amendment to Cancel Claims	Same as item 1	79	2	158	$400	$63,200
4	Reply Brief	Same as item 1	372	5	1,860	$400	$744,000
5	Request for Rehearing Before the PTAB	Same as item 1	21	5	105	$400	$42,000

[6] https://www.aipla.org/detail/journal-issue/2019-report-of-the-economic-survey

Item #	Item	Respondents	Responses (yr) (a)	Hours (b)	Burden (hrs/yr) (c) (a) x (b)	Rate ($/hr) (d)	Total Cost ($/hr) (e) (c) x (d)
6	Petitions to the Chief Administrative Patent Judge Under 37 CFR 41.3	Same as item 1	3	4	12	$400	$4,800
7	Request for Oral Hearing	Same as item 1	38	.5	19	$400	$7,600
	Totals	**1,133**	**2,445**		**28,289**		**$11,315,600**

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.

There are no capital start-up, maintenance, or record keeping costs associated with this information collection. There are, however, non-hour costs due to filing fees and postage costs

The total annual filing fee/non-hour cost burden to respondents is outlined in Table 4 below:

Table 4: Filing Fees

Item #	Item	Estimated Annual Responses	Fee ($)	Total Cost ($)
1	Notice of appeal (large)	16,092	$840	$13,517,280
1	Notice of appeal (small)	5,439	$420	$2,284,380
1	Notice of appeal (micro)	1,133	$210	$237,930
2	Filing a brief in support of an appeal in an *inter partes* reexamination proceeding (large)	7	$2,100	$14,700
2	Filing a brief in support of an appeal in an *inter partes* reexamination proceeding (small)	2	$1,050	$2,100
2	Filing a brief in support of an appeal in an *inter partes* reexamination proceeding (micro)	1	$525	$525
4	Forwarding an Appeal in an Application or *Ex Parte* Reexamination Proceeding to the Board (large)	11,351	$2,360	$26,788,360
4	Forwarding an Appeal in an Application or *Ex Parte* Reexamination Proceeding to the Board (small)	3,837	$1,180	$4,527,660
4	Forwarding an Appeal in an Application or *Ex Parte* Reexamination Proceeding to the Board (micro)	799	$590	$471,410
7	Request for oral hearing (large)	533	$1,360	$724,880
7	Request for oral hearing (small)	180	$680	$122,400
7	Request for oral hearing (micro)	37	$340	$12,580
	Total	**39,411**	**---**	**$48,704,205**

Postage

The briefs, petitions, amendments, and requests may be submitted by mail through the United States Postal Service. The USPTO expects the items in this information collection to be mailed by Priority Mail using the legal flat rate envelope, which can accommodate both the varying submission weights of these submissions and the various postal zones. Using the Express Mail flat rate cost for mailing envelopes, the USPTO estimates that the average cost for sending these submissions by Priority Mail will be $8.05 and that approximately 978 papers will be mailed to the USPTO for a total postage cost of $7,873.

Therefore, the total (non-hour) respondent cost burden for this information collection is estimated to be $48,712,078, which includes $48,704,205.00 filing fees and $7,873 in postage.

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 expects that the amendments, notices of appeal, reply briefs, requests for oral hearing, and requests for rehearing before the PTAB will be processed by a GS-11,

step 5 staff member. In the case of the appeal briefs, the USPTO expects that they will be processed by patent appeal specialists and a paralegal specialist in the GS-9, step 5 and GS-11, step 5 grades, respectively. For the petitions to the chief administrative patent judge under 37 CFR 41.3, the USPTO expects that they will be processed by a GS-5, step 1 staff member.

The USPTO estimates that it takes a GS-11, step 5[7] staff member approximately 6 minutes (0.10 hours) to process the amendments, notices of appeal, reply briefs, and requests for rehearing before the PTAB at an estimated cost of $50.86 per hour (GS-11/5 hourly rate of $39.12 with 30% ($11.74) added for benefits and overhead). The USPTO estimates that it takes a GS-11, step 5 staff member approximately 6 minutes (0.10_hours) to process requests for oral hearing before the PTAB at an estimated cost of $50.86 per hour (GS-11/5 hourly rate of $39.12 with 30% ($11.74) added for benefits and overhead).

The USPTO estimates that it takes a GS-9, step 5[8] (patent appeal specialist) and a GS-11, step 5 (paralegal specialist) approximately 18 minutes (0.30 hours) to process the appeal brief at an estimated cost of $42.03per hour (GS-9/5 hourly rate of $ 32.33with 30% ($9.70) added for benefits and overhead) and $50.86per hour (GS-11/5 hourly rate of $ 39.12with 30% ($11.74) added for benefits and overhead), respectively.

The USPTO estimates that it takes a GS-5, step 1[9] staff member approximately 30 minutes (0.50 hours) to process the petitions to the chief administrative patent judge under 37 CFR 41.3 at an estimated cost of $24.48 per hour (GS-5/1 hourly rate of $18.83with 30% ($5.65) added for benefits and overhead).

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

Table 5: Burden Hour/Cost to the Federal Government

IC #	Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a) x (b)	Rate ($/hr) (d)	Total Cost ($/hr) (e) (c) x (d)
1	Notice of Appeal	0.10	22,664	2,266.4	$50.86	$115,269.10
2	Appeal Brief Patent Appeal Specialist Paralegal Specialist	0.30 0.30	15,987	9,592.2	$50.86	$487,859.292
3	Amendment	0.10	1,574	157.4	$50.86	$7,977.032
4	Reply Brief	0.10	7,432	743.2	$50.86	$37,799.152
5	Request for Rehearing Before the PTAB	0.10	411	41.10	$50.86	$2,090.346
6	Petitions to the Chief Administrative Patent Judge Under 37 CFR 41.3	0.50	68	34	$24.48	$832.32
7	Request for Oral Hearing	0.10	750	75	$50.86	$3,822
	Total	**- - -**	**48,886**	**$12,909.3**		**$655,649.24**

[7] https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2020/DCB_h.pdf
[8] https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2020/DCB_h.pdf
[9] https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2020/DCB_h.pdf

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

- ICR Summary of Burden:
- N

	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	48,886 48886	0 0	24,988 24988	238 238	0 0	23,660 23660
Annual Time Burden (Hr)	565,927 565927	0 0	14,856 14856	-4,027 -4027	0 0	555,098 555098
Annual Cost Burden ($)	48,712,078 48712078	0 0	16,899,450 16899450	-21,590,035 -21590035	0 0	53,402,663

A. OMB previously approved this information collection.

The current information collection contains:

- 23,660 responses
- 555,098 burden hours
- $227,590,180 in respondent hourly cost burden
- $53,402,663 in annual (non-hour) costs

B. Changes proposed in this request to OMB

This information collection renewal, as outlined in the tables above, seeks to modify the existing information collection. This information collection renewal contains an estimated:

- 48,886 responses
- 565,927 burden hours
- $226,370,800 in respondent hourly cost burden
  $48,712,078 in annual (non-hour) costs

Additional burdens due to three new items in information collection

This renewal adds three items currently approved in another information collection (0651– 0031: Patent Processing) to include all items related to patent appeals in a single information collection. These three items are: Notice of Appeal, Amendment to Cancel Claims During an Appeal, and Request for Oral Hearing. A separate change request will be submitted to remove these three items from that information collection (0651– 0031: Patent Processing).

This addition results in the estimated respondents numbers, responses and hourly burdens. At the same time decreases in the estimated number of responses for items already in the information collection slightly decreased; slightly offsetting the incoming increases.

Changes in annual (non-hour) costs

For this renewal, the USPTO estimates that the total annual (non-hour) costs will decrease by $4,690,585 (from $53,402,663 to $48,712,078). Below is the list of Agency adjustments:

- Decrease of $2,815 in postage costs. This information collection is currently approved with a total of $10,687.65 in postage costs associated with mailing assignment recordation requests to the USPTO. For this renewal, the USPTO estimates that the postage costs for mailed items will decrease to $7,873, primarily due to an decrease in mailed responses by 679.
- Decrease of 4,741 in estimated annual responses that paid fees. The 2017 renewal estimated 60,139 fee paying responses while the current renewal is estimating 55,398 fee paying responses.

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.

There is no plan to publish this information for statistical use.

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 OMB expiration date.

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. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection of information does not employ statistical methods.