

**SUPPORTING STATEMENT**  
**United States Patent and Trademark Office**  
**Patent Trial and Appeal Board (PTAB) Appeals**  
**OMB CONTROL NO. 0651-0063**  
**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 Trial and Appeal Board (PTAB or Board) is established by statute under 35 U.S.C. 6 (American Inventor Protection Act of 1999).<sup>1</sup> 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, 135 and 315, to decide appeals in inter partes reexamination proceedings and interferences. 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 and interference 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 Board also conducts interference proceedings.

The items associated with this information collection include appeals in applications and ex parte reexamination proceedings, and appeals in inter partes reexamination proceedings and interference 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.

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

| Item No. | Requirement                                                          | Statute         | Regulation   |
|----------|----------------------------------------------------------------------|-----------------|--------------|
| 1        | Notice of Appeal                                                     | 35 U.S.C. § 134 | 37 CFR 41.31 |
| 2        | Appeal Brief                                                         | 35 U.S.C. § 134 | 37 CFR 41.37 |
| 3        | Amendment to Cancel Claims                                           | 35 U.S.C. § 134 | 37 CFR 41.33 |
| 4        | Reply Brief                                                          | 35 U.S.C. § 134 | 37 CFR 41.41 |
| 5        | Petitions to the Chief Administrative Patent Judge Under 37 CFR 41.3 | 35 U.S.C. § 134 | 37 CFR 41.3  |
| 6        | Request for Oral Hearing                                             | 35 U.S.C. § 134 | 37 CFR 41.47 |

<sup>1</sup> <https://www.uspto.gov/patent/laws-and-regulations/american-inventors-protection-act-1999>.

| Item No. | Requirement                                                                                         | Statute                   | Regulation                                           |
|----------|-----------------------------------------------------------------------------------------------------|---------------------------|------------------------------------------------------|
| 7        | Request for Rehearing Before the PTAB                                                               | 35 U.S.C. § 134           | 37 CFR 41.52                                         |
| 8        | Statements, Motions, Oppositions, and Replies in Preliminary and Priority Phases of an Interference | 35 U.S.C. § 135 (pre-AIA) | 37 CFR 41.109, 41.110-41.122, 41.154, 41.204, 41.208 |

**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 patent electronic filing system. For interferences, the information in this information collection is generally submitted through the Patent Trial and Appeal Board End-to-End System (PTAB E2E), a separate electronic filing system. Parties may seek authorization to submit a filing by means other than electronic filing pursuant to 37 CFR 41.106(d)(2).

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. The rules governing interference proceedings are found at 37 CFR 41.100 through 41.208. Chapter 1200 of *The Manual of Patent Examining Procedure*<sup>2</sup> 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. Sections 2301 through 2308 of *The Manual of Patent Examining Procedure* sets forth additional procedures for applicants and patent examiners to follow regarding interference proceedings.

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

<sup>2</sup> <https://www.uspto.gov/web/offices/pac/mpep/index.html>.

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

**Table 2: Needs and Uses**

| Item No. | Form/Function                                                                                       | Form No.                | Needs and Uses                                                                                                                                                                                                                                                                                                                                                                                                                        |
|----------|-----------------------------------------------------------------------------------------------------|-------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1        | Notice of Appeal                                                                                    | PTO/AIA/31<br>PTO/SB/31 | <ul style="list-style-type: none"> <li>Used by the applicant to notify the PTAB of the intent to appeal.</li> <li>Used by the PTAB to manage schedules and dockets.</li> </ul>                                                                                                                                                                                                                                                        |
| 2        | Appeal Brief                                                                                        | No Form Associated      | <ul style="list-style-type: none"> <li>Used by the applicant to set forth the claims, issues, and arguments on appeal to the PTAB.</li> <li>Used by the PTAB to aid in rendering a decision on the claims, issues, and arguments submitted by the applicant.</li> </ul>                                                                                                                                                               |
| 3        | Amendment to Cancel Claims                                                                          | No Form Associated      | <ul style="list-style-type: none"> <li>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.</li> </ul>                                                                                                                                                                                             |
| 4        | Reply Brief                                                                                         | No Form Associated      | <ul style="list-style-type: none"> <li>Used by the applicant to respond to the examiner's answer.</li> <li>Used by the PTAB to aid in rendering a decision on the claims, issues, and arguments submitted by the applicant.</li> </ul>                                                                                                                                                                                                |
| 5        | Petitions to the Chief Administrative Patent Judge Under 37 CFR 41.3                                | No Form Associated      | <ul style="list-style-type: none"> <li>Permits parties to petition the Chief Administrative Patent Judge on matters pending before the PTAB.</li> <li>Used by the PTAB to determine whether the necessary information has been provided to grant the petition.</li> </ul>                                                                                                                                                             |
| 6        | Request for Oral Hearing                                                                            | PTO/AIA/32<br>PTO/SB/32 | <ul style="list-style-type: none"> <li>Used by applicant in circumstances when applicant deems it necessary for a proper presentation of the appeal</li> <li>Used by the PTAB to manage schedules and dockets.</li> </ul>                                                                                                                                                                                                             |
| 7        | Request for Rehearing Before the PTAB                                                               | No Form Associated      | <ul style="list-style-type: none"> <li>Used by the applicant to request reconsideration of a PTAB decision.</li> <li>Used by the PTAB to decide whether to grant or deny a request for reconsideration of a decision.</li> </ul>                                                                                                                                                                                                      |
| 8        | Statements, Motions, Oppositions, and Replies in Preliminary and priority Phases of an Interference | No Form Associated      | <ul style="list-style-type: none"> <li>Used by parties to seek relief in a proceeding or change the presumption set forth in a declaration of interference.</li> <li>Used by the opposing parties to file reasons why the Board should not grant the relief sought in a motion.</li> <li>Used by the Board in issuing a decision with respect to the relief sought as well as the ultimate issue of priority of invention.</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 collection. Also describe any consideration of using information technology to reduce burden.**

The USPTO collects the submissions in this information collection via the patent electronic filing system, paper, by mail, facsimile, or hand delivery. The Legal Framework for this system<sup>3</sup>, 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 appeals related information in this information collection.

The 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 and other paper delivery costs. After the document has been successfully submitted through the patent electronic filing system, 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 Patent Center 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 the patent electronic filing system 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.

Further all of the interference proceeding papers are generally filed electronically, unless otherwise authorized by the Board. The USPTO currently utilizes the PTAB E2E, which allows parties to file proceedings electronically. The PTAB disseminates interference opinions and decisions to the public through the USPTO's website and in the individual case locations in PTAB E2E, which has a public portal. The PTAB also posts final decisions in interference proceedings on the USPTO's electronic Freedom of Information Act (e-FOIA) website.

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

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<sup>3</sup> [http://www.uspto.gov/patents/process/file/efs/guidance/New\\_legal\\_framework.jsp](http://www.uspto.gov/patents/process/file/efs/guidance/New_legal_framework.jsp).

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<sup>4</sup> 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.**

This information is collected only when an applicant (or a patent owner) submits information for an appeal before the PTAB or when parties file statements, motions or other associated papers for interference proceedings. This information is not collected elsewhere. Therefore, this information collection does not create a duplication of effort or collection of data. With respect to interferences, this information collection may, in part, solicit data already available at the USPTO, in that certain copies of evidence may have been submitted earlier as part of the patent examination process of the application that resulted in the interference proceeding. The duplication of effort is limited, however, and the Agency considers it necessary for absolute clarity as to the evidence relied on in the proceeding to have a complete record, which outweighs the burden on the public.

**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)<sup>5</sup> and the Consolidated Appropriations Act, 2023 which included the Unleashing American Innovators Act of 2022 (UAIA),<sup>6</sup> the USPTO provides a 60% 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 and the Consolidated Appropriations Act, 2023, the USPTO provides an 80% reduction in the fees set 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.

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<sup>4</sup> <https://www.uspto.gov/patent/laws-and-regulations/american-inventors-protection-act-1999>.

<sup>5</sup> [https://www.uspto.gov/sites/default/files/aia\\_implementation/20110916-pub-l112-29.pdf](https://www.uspto.gov/sites/default/files/aia_implementation/20110916-pub-l112-29.pdf).

<sup>6</sup> Public Law 117-328.

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, or an interference is declared. 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 or to determine preliminary and priority issues in an interference proceeding. If this information was not collected, the USPTO could not comply with the requirements of 35 U.S.C. § 134 or § 135 (pre-AIA) and 37 CFR Part 41.

**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 July 3, 2023 (88 FR 42699).<sup>7</sup> The public comment period ended on September 1. 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, to petition the Chief Administrative Patent Judges, and to determine preliminary and priority issues in an interference proceeding.

**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.**

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<sup>7</sup> <https://www.govinfo.gov/content/pkg/FR-2023-07-03/pdf/2023-14014.pdf>.

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 the 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 patent electronic filing system 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 Center 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 the Patent Center and Public Patent Search.

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).<sup>8</sup> 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

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<sup>8</sup> <https://www.osec.doc.gov/opog/PrivacyAct/SORNs/pat-tm-6.html>.

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 (SORN) COMMERCE/PAT-TM-7 Patent Application Files; published on March 29, 2013 (78 FR 19243).<sup>9</sup> 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 3 calculates the burden hours and costs of this information collection to the public, based on the following factors:

- **Respondent Calculation Factors**

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<sup>9</sup> <https://www.osec.doc.gov/opog/privacyact/SORNs/pat-tm-7.html>.

The USPTO projects that 12,529 respondents to this information collection will submit 22,149 responses per year. Respondents will come predominately from the private sector. The USPTO estimates that approximately 24% (5,315) of these responses will be from small entities and an additional 5% (1,107) of these responses will be from micro entities. The USPTO also estimates that approximately 99% (21,928) 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 120 hours to complete the briefs, amendments, requests, and petitions in this information collection, depending on the complexity of the request. This estimate 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 \$435 per hour for respondent cost burden calculations, which is the median rate for intellectual property attorneys in private firms as shown in the 2021 *Report of the Economic Survey* published by the American Intellectual Property Law Association (AIPLA).

Using this hourly rate, the USPTO estimates that the total respondent cost burden for this information collection is \$103,964,565 per year.

**Table 3: Total Burden Hours and Hourly Costs to Private Sector Respondents**

| Item No. | Item             | Estimated Annual Responses | Responses per Respondent | Estimated Annual Responses | Estimated Time For Response (hours) | Estimated Burden (hour/year) | Rate <sup>10</sup> (\$/hour) | Estimated Annual Respondent Cost Burden<br>(e) x (f) = (g) |
|----------|------------------|----------------------------|--------------------------|----------------------------|-------------------------------------|------------------------------|------------------------------|------------------------------------------------------------|
|          |                  | (a)                        | (b)                      | (a) x (b) = (c)            | (d)                                 | (c) x (d) = (e)              | (f)                          |                                                            |
| 1        | Notice of Appeal | 12,312                     | 1                        | 12,312                     | 0.5                                 | 6,156                        | \$435                        | \$2,677,860                                                |
| 2        | Appeal Brief     | 6,768*                     | 1                        | 6,768                      | 32                                  | 216,576                      | \$435                        | \$94,210,560                                               |

<sup>10</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 attorneys in private firms which is \$435 per hour.

| Item No. | Item                                                                                                | Estimated Annual Respondents<br>(a) | Responses per Respondent<br>(b) | Estimated Annual Responses<br>(a) x (b) = (c) | Estimated Time For Response (hours)<br>(d) | Estimated Burden (hour/year)<br>(c) x (d) = (e) | Rate (\$/hour)<br>(f) | Estimated Annual Respondent Cost Burden<br>(e) x (f) = (g) |
|----------|-----------------------------------------------------------------------------------------------------|-------------------------------------|---------------------------------|-----------------------------------------------|--------------------------------------------|-------------------------------------------------|-----------------------|------------------------------------------------------------|
| 3        | Amendment to Cancel Claims                                                                          | 112*                                | 1                               | 112                                           | 2                                          | 224                                             | \$435                 | \$97,440                                                   |
| 4        | Reply Brief                                                                                         | 2,197*                              | 1                               | 2,197                                         | 5                                          | 10,985                                          | \$435                 | \$4,778,475                                                |
| 5        | Petitions to the Chief Administrative Patent Judge Under 37 CFR 41.3                                | 46*                                 | 1                               | 46                                            | 4                                          | 184                                             | \$435                 | \$80,040                                                   |
| 6        | Request for Oral Hearing                                                                            | 477*                                | 1                               | 477                                           | 0.5                                        | 239                                             | \$435                 | \$103,965                                                  |
| 7        | Request for Rehearing Before the PTAB                                                               | 207                                 | 1                               | 207                                           | 5                                          | 1,035                                           | \$435                 | \$450,225                                                  |
| 8        | Statements, Motions, Oppositions, and Replies in Preliminary and Priority Phases of an Interference | 10                                  | 3                               | 30                                            | 120                                        | 3,600                                           | \$435                 | \$1,566,000                                                |
|          | <b>Totals</b>                                                                                       | <b>12,529</b>                       | <b>---</b>                      | <b>22,149</b>                                 | <b>---</b>                                 | <b>238,999</b>                                  | <b>---</b>            | <b>\$103,964,565</b>                                       |

\*These lines (2-6) are subsets of the respondents from line 1, and not included in the total for this column. USPTO includes these numbers to show how the values in column C are calculated.

**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 cost, or recordkeeping costs associated with this information collection. However, USPTO estimates that the total annual (non-hour) cost burden for this information collection, in the form of filing fees (\$17,183,424) and postage (\$2,199) is \$17,185,623.

### Filing Fees

There are fees associated with submitting certain items in this information collection as outlined in Table 4 below:

**Table 4: Filing Fees**

| Item No. | Fee Code | Item                                                                                                           | Estimated Annual Responses (a) | Fee (\$) (b) | Total Cost (\$) (a) x (b) = (c) |
|----------|----------|----------------------------------------------------------------------------------------------------------------|--------------------------------|--------------|---------------------------------|
| 1        | 1401     | Notice of appeal (undiscounted)                                                                                | 8,737                          | \$840        | \$7,339,080                     |
| 1        | 2401     | Notice of appeal (small)                                                                                       | 3,230                          | \$336        | \$1,085,280                     |
| 1        | 3401     | Notice of appeal (micro)                                                                                       | 345                            | \$168        | \$57,960                        |
| 2        | 1404     | Filing a brief in support of an appeal in an <i>inter partes</i> reexamination proceeding (undiscounted)       | 1                              | \$2,100      | \$2,100                         |
| 2        | 2404     | Filing a brief in support of an appeal in an <i>inter partes</i> reexamination proceeding (small)              | 1                              | \$840        | \$840                           |
| 2        | 3404     | Filing a brief in support of an appeal in an <i>inter partes</i> reexamination proceeding (micro)              | 1                              | \$420        | \$420                           |
| 4        | 1413     | Forwarding an Appeal in an Application or <i>Ex Parte</i> Reexamination Proceeding to the Board (undiscounted) | 3,131                          | \$2,360      | \$7,389,160                     |
| 4        | 2413     | Forwarding an Appeal in an Application or <i>Ex Parte</i> Reexamination Proceeding to the Board (small)        | 797                            | \$944        | \$752,368                       |
| 4        | 3413     | Forwarding an Appeal in an Application or <i>Ex Parte</i> Reexamination Proceeding to the Board (micro)        | 91                             | \$472        | \$42,952                        |
| 7        | 1403     | Request for oral hearing (undiscounted)                                                                        | 319                            | \$1,360      | \$433,840                       |
| 7        | 2403     | Request for oral hearing (small)                                                                               | 134                            | \$544        | \$72,896                        |
| 7        | 3403     | Request for oral hearing (micro)                                                                               | 24                             | \$272        | \$6,528                         |
| ---      | ---      | <b>Totals</b>                                                                                                  | <b>16,811</b>                  | <b>---</b>   | <b>\$17,183,424</b>             |

### Postage

The briefs, petitions, amendments, and requests may be submitted by mail through the United States Postal Service. The USPTO expects that at most 1% of the responses in this information collection will be submitted by mail. The USPTO estimates that the average postage cost for a mailed submission, using a Priority Mail 2-day flat rate legal envelope, will be \$9.95. The USPTO estimates approximately 221 submissions per year may be mailed to the USPTO, for an estimated total postage cost of \$2,199 per year.

**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 and interference filings, 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 staff member approximately 6 minutes (0.10 hours) to process the amendments, notices of appeal, reply briefs, requests for rehearing before the PTAB, and requests for oral hearing at an estimated cost of \$55.48 per hour (GS-11/5 hourly rate of \$42.68 with 30% (\$12.80) added for benefits and overhead).

The USPTO estimates that it takes a GS-9, step 5 (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 average cost of \$50.67 per hour. This is calculated from the GS-9, step 5 hourly rate of \$45.85 (\$35.27 with 30% (\$10.58) added for benefits and overhead) and GS-11, step 5 rate of \$55.48 per hour (as detailed above), respectively.

The USPTO estimates that it takes a GS-5, step 1 staff member approximately 30 minutes (0.50 hours) to process the petitions to the chief administrative patent judge under 37 CFR 41.3, and approximately 10 minutes (0.10 hours) to process the interference related filings at an estimated cost of \$24.48 per hour (GS-5/1 hourly rate of \$18.83 with 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**

| Item No. | Item                                                             | Estimated Annual Responses (a) | Estimated Burden Hours (b) | Estimated Hourly Burden (a) x (b) = (c) | Rate <sup>11</sup> (\$/hr) (d) | Total Federal Government Cost (c) x (d) = (e) |
|----------|------------------------------------------------------------------|--------------------------------|----------------------------|-----------------------------------------|--------------------------------|-----------------------------------------------|
| 1        | Notice of Appeal                                                 | 12,312                         | 0.10                       | 1,231                                   | \$55.48                        | \$68,296                                      |
| 2        | Appeal Brief<br>Patent Appeal Specialist<br>Paralegal Specialist | 6,768                          | 0.60                       | 2,030                                   | \$50.67                        | \$205,771                                     |
| 3        | Amendment                                                        | 112                            | 0.10                       | 11                                      | \$55.48                        | \$610                                         |

<sup>11</sup> [https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2023/DCB\\_h.pdf](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2023/DCB_h.pdf).

| Item No. | Item                                                                                                | Estimated Annual Responses (a) | Estimated Burden Hours (b) | Estimated Hourly Burden (a) x (b) = (c) | Rate (\$/hr) (d) | Total Federal Government Cost (c) x (d) = (e) |
|----------|-----------------------------------------------------------------------------------------------------|--------------------------------|----------------------------|-----------------------------------------|------------------|-----------------------------------------------|
| 4        | Reply Brief                                                                                         | 2,197                          | 0.10                       | 220                                     | \$55.48          | \$12,206                                      |
| 5        | Request for Rehearing Before the PTAB                                                               | 46                             | 0.10                       | 21                                      | \$55.48          | \$277                                         |
| 6        | Petitions to the Chief Administrative Patent Judge Under 37 CFR 41.3                                | 477                            | 0.50                       | 239                                     | \$24.48          | \$5,851                                       |
| 7        | Request for Oral Hearing                                                                            | 207                            | 0.10                       | 48                                      | \$55.48          | \$1,165                                       |
| 8        | Statements, Motions, Oppositions, and Replies in preliminary and priority phases of an Interference | 30                             | 0.10                       | 3                                       | \$24.48          | \$73                                          |
|          | <b>Totals</b>                                                                                       | <b>22,149</b>                  | <b>---</b>                 | <b>5,791</b>                            | <b>---</b>       | <b>\$294,249</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 | 22,149     | 0                                 | 30                                      | -26,767                                     | 0                                            | 48,886              |
| Annual Time Burden (Hr)    | 238,999    | 0                                 | 3,600                                   | -330,528                                    | 0                                            | 565,927             |
| Annual Cost Burden (\$)    | 17,185,623 | 0                                 | 0                                       | -29,994,658                                 | 0                                            | 47,180,281          |

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

The increase in the number of responses (+30) and burden hours (+3,600) is due to the addition of Item 8 (Statements, Motions, Oppositions, and Replies in preliminary and priority phases of an Interference) to this information collection.

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

The decrease in the number of responses (-26,767) and burden hours (-330,528) is due to the estimated reduction in the number of respondents completing the items this information collection.

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

The USPTO estimates a decrease (-\$29,994,658) for the total annual (non-hour) costs due to reductions in the number of respondents paying filing fees and postage costs.

**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.