

SUPPORTING STATEMENT
United States Patent and Trademark Office
Practitioner Conduct and Discipline
OMB Control Number 0651-0017
2022

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 Director of the USPTO has the authority to establish regulations governing the conduct and discipline of agents, attorneys, or other persons representing applicants and other parties before the USPTO (35 U.S.C. 2 and 32–33). The USPTO Rules of Professional Conduct, set forth in subpart D, part 11 of title 37 of the Code of Federal Regulations, prescribe the manner in which agents, attorneys, and other persons (collectively, “practitioners”) representing applicants and other parties before the USPTO should conduct themselves professionally. Part 11 outlines practitioners’ responsibilities for recordkeeping and reporting violations or complaints of misconduct to the USPTO. Subpart C of part 11 sets forth the manner by which the USPTO investigates misconduct and imposes discipline.

The USPTO Rules of Professional Conduct require all practitioners to maintain complete records of all funds, securities, and other properties of clients coming into his or her possession, and to render appropriate accounts to the client regarding the funds, securities, and other properties of clients coming into the practitioner’s possession, collectively known as “client property.” These recordkeeping requirements are necessary to maintain the integrity of client property. State bars require attorneys to perform similar recordkeeping. Part 11 also requires a practitioner to report knowledge of certain violations of the USPTO Rules of Professional Conduct to the USPTO. The OED Director may, after notice and opportunity for a hearing, suspend, exclude, or disqualify any practitioner from further practice before the USPTO based on non-compliance with the USPTO Rules of Professional Conduct. Practitioners who have been excluded or suspended from practice before the USPTO, practitioners transferred to disability inactive status, and practitioners who have resigned must maintain records of their compliance with the suspension or exclusion order, transfer to disability inactive status, or resignation. These records are necessary to demonstrate eligibility for reinstatement. Reports of alleged violations of the USPTO Rules of Professional Conduct are used by the Director of OED to conduct investigations and disciplinary hearings, as appropriate.

This information collection covers the various reporting and recordkeeping requirements set forth in Part 11 for practitioners representing applicants and other parties before the

USPTO. Also covered are petitions for reinstatement for suspended or excluded practitioners and the means for reporting violations or complaints of misconduct to the USPTO.

If this information is not collected, the Director of OED would have no knowledge of alleged violations and would be unable to enforce the provisions of the Rules.

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

Table 1: Information Requirements

| Item No. | Requirement | Statute | Regulation |
|----------|--|---------------------------------|------------------|
| 1 | Complaint/Violation Reporting | 35 U.S.C. §§ 2(b)(2) (D) and 32 | 37 CFR 11.803(a) |
| 2 | Petition for Reinstatement under the provisions section 11.60(c) | 35 U.S.C. §§ 2(b)(2) (D) and 32 | 37 CFR § 11.60 |
| 3 | Recordkeeping Maintenance and Disclosure (includes advertisements, disclosure requirements relating to soliciting professional employment, notifications by non-attorney Practitioner of inadvertently sent documents, and financial books and records such as trust accounts, fiduciary accounts, and operating accounts) | 35 U.S.C. §§ 2(b)(2) (D) and 32 | 37 CFR 11.115 |
| 4 | Recordkeeping Maintenance Regarding Practitioners Under Suspension or Exclusion | 35 U.S.C. §§ 2(b)(2) (D) and 32 | 37 CFR 11.58 |

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.

There are no forms associated with this collection of information.

The information collected, maintained, and used in this information collection is based on OMB and USPTO guidelines. This includes the basic information quality standards established in the Paperwork Reduction Act (44 U.S.C. Chapter 35), in OMB Circular A-130, and in the OMB information quality guidelines.

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

Table 2: Needs and Uses

| Item No. | Form and Function | Form No. | Needs and Uses |
|----------|-------------------------------|--------------------|--|
| 1 | Complaint/Violation Reporting | No Form Associated | <ul style="list-style-type: none"> Used by the public to report knowledge of certain violations of the USPTO Rules of Professional Conduct. Used by the public to maintain proper documentation in order to fully cooperate with the USPTO in an investigation. Used by the USPTO to investigate violations of the USPTO Rules of Professional Conduct. |

| | | | |
|---|---|--------------------|--|
| 2 | Petition for Reinstatement under the provisions section 11.60(c) | No Form Associated | <ul style="list-style-type: none"> • Used by suspended or excluded practitioners to petition the USPTO for reinstatement. • Used by the USPTO to review the petition for reinstatement. |
| 3 | Recordkeeping Maintenance and Disclosure | No Form Associated | <ul style="list-style-type: none"> • Used by the public to maintain client integrity in the day-to-day operation of their practice. • Used by the USPTO to comply with Federal regulations. • Used by the USPTO to impose regulations governing the conduct of attorneys, agents, and other persons representing applicants and other parties before the USPTO. |
| 4 | Recordkeeping Maintenance Regarding Practitioners Under Suspension or Exclusion | No Form Associated | <ul style="list-style-type: none"> • Used by practitioners seeking reinstatement to show compliance with the terms required for reinstatement. • Used by the public to provide evidence that a practitioner has or has not complied with the rules during suspension or exclusion. • Used by the USPTO to determine whether a practitioner qualifies for reinstatement. • Used by the USPTO to ensure that compliance with the terms required for reinstatement are being met. |

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

For the most part, USPTO accepts electronic submissions for items 1 and 2. For items 3 and 4, respondents may maintain their records as they see fit which may include electronic means.

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

The data in this information collection is not routinely collected or maintained elsewhere. Inasmuch as a report by an attorney or agent of an alleged violation of the USPTO Rules of Professional Conduct is reported to the OED Director, there is no duplication of effort.

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

The reporting and recordkeeping requirements are essentially the same for all attorneys and agents. The collection of this information does not pose a significant economic impact on small entities or small businesses.

- 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 on an event-by-event basis; it is not time-driven.

Therefore, this information could not be collected less frequently. An attorney, agent, or other person representing applicants and other parties before the USPTO is obligated to make a report when a violation is discovered.

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

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

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

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

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

The 60-Day Notice was published in the *Federal Register* on February 8, 2022 (87 FR 7159). The public comment period ended on April 11, 2022. No comments were received.

The USPTO has long-standing relationships with groups from whom patent application data is collected, such as the American Intellectual Property Law Association, as well as patent bar associations, inventor groups, and users of USPTO public facilities. Views expressed by these groups are considered in developing information collection requirements and during the renewal of an information collection. No views have been expressed regarding the present renewal.

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

This information collection does not involve a payment or gift to any respondent. Response to this information collection is necessary to report and investigate possible violations of the USPTO Rules of Professional Conduct.

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.**

Administrative controls are used to safeguard this information as appropriate. Reports of alleged violations of the Rules of Professional Conduct are maintained in confidence until such time as an attorney, agent, or other person representing an applicant or other party before the USPTO is publicly disciplined. Violation of reporting activities may result in notices being published in the *Official Gazette of the United States Patent and Trademark Office* and/or the Agency's Freedom of Information Act reading room. These may include notices of public reprimand, censure, suspension, exclusion, or exclusion on consent. The USPTO has been successful in declining to make available investigatory material in response to a request under the Freedom of Information Act based on 5 U.S.C. §§ 552(b)(6) (unwarranted invasion of personal privacy) and 552(b)(7)(C) (investigatory records).

This information collection contains information that is subject to the Privacy Act and may be covered by the following three systems of records notices: (1) COMMERCE/PAT-TM-2 Complaints, Investigations and Disciplinary Proceedings Relating to Registered Patent Attorneys and Agents, available at <https://www.govinfo.gov/content/pkg/FR-2013-03-19/pdf/2013-06255.pdf>; (2) COMMERCE/PAT-TM-5 Non-Registered Persons Rendering Assistance to Patent Applicants, available at <https://www.govinfo.gov/content/pkg/FR-2013-03-19/pdf/2013-06256.pdf>; and (3) COMMERCE/PAT-TM-7, Patent Application Files, available at <https://www.govinfo.gov/content/pkg/FR-2013-03-29/pdf/2013-07341.pdf>.

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

None of the information collected is considered to be of a sensitive nature.

12. **Estimate of Hour and Cost Burden to Respondents** 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'.

Tables 3 and 4 calculate the burden hours and costs of this information collection to the public, based on the following factors. These estimates are based on the Agency's long-standing institutional knowledge of and experience with the type of information collected by these items.

- **Respondent Calculation Factors**

The USPTO estimates that it will receive 13,190 responses to this information collection per year.

- **Burden Hour Calculation Factors**

The USPTO estimates that it will take the public between 1 and 20 hours, depending upon the complexity of the situation, to gather, prepare, maintain, and/or submit the necessary information.

- **Cost Burden Calculation Factors**

The USPTO uses a professional rate of \$435 per hour for the respondent cost burden calculations, which is the mean rate of intellectual property attorneys in private firms as shown in the 2021 *Report of the Economic Survey* published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association.

Using these hourly rates, the USPTO estimates \$6,173,520 per year for the total hourly costs associated with respondents.

Table 3: Total Reporting Burden Hours and Hourly Costs to Individuals or Households Respondents

| Item No. | Item | Estimated Annual Respondents (a) | Responses per Respondent (b) | Estimated Annual Responses (a) X (b) = (c) | Estimated Time For Response (Hours) (d) | Estimated Burden (hour/year) (c) x (d) = (e) | Rate ¹ (\$/hour) (f) | Estimated Annual Respondent Cost Burden (e) x (f) = (g) |
|----------|--|-------------------------------------|---------------------------------|---|--|---|------------------------------------|--|
| 1 | Complaint/Violation Reporting | 216 | 1 | 216 | 3 | 648 | \$435 | \$281,880 |
| 2 | Petition for Reinstatement under the provisions section 11.60(c) | 5 | 1 | 5 | 1 | 5 | \$435 | \$2,175 |
| | Totals | 221 | --- | 221 | --- | 653 | --- | \$284,055 |

Table 4: Total Recordkeeping Burden Hours and Hourly Costs to Individual and Household Respondents

| Item No. | Item | Estimated Annual Responses (a) | Estimated Time For Response (Hours) (b) | Estimated Burden (hour/year) (a) x (b) = (c) | Rate ² (\$/hour) (d) | Estimated Annual Respondent Cost Burden (c) x (d) = (e) |
|----------|--|-----------------------------------|--|---|------------------------------------|--|
| 3 | Recordkeeping Maintenance and Disclosure (includes advertisements, disclosure requirements relating to soliciting professional employment, notifications by non-attorney practitioner of inadvertently sent documents, and financial books and records such as trust accounts, fiduciary accounts, and operating accounts) | 12,939 | 1 | 12,939 | \$435 | \$5,628,465 |
| 4 | Recordkeeping Maintenance Regarding Practitioners Under Suspension or Exclusion | 30 | 20 | 600 | \$435 | \$261,000 |
| | Totals | 12,969 | --- | 13,539 | --- | \$5,889,465 |

13. Total Annualized (Non-hour) Cost Burden 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.**

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

² Ibid.

Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.

- **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collections services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
- **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

This information collection contains non-hour cost burdens in both fees paid by the public and associated postage costs for mailing items to the USPTO. The USPTO estimates that the total annual (non-hour) cost burden for this information collection, in the form of filing fees and postage is \$8,419.

Filing Fees

There is one filing fee associated with this information collection. This fee is listed in table 5 below.

Table 5: Filing Fee/Non-Hour Cost Burden to Respondents

| Item No. | Item | Estimated Annual Responses (a) | Filing Fee (\$) (b) | Total Non-hour Cost Burden (yr) (a) x (b) = (c) |
|-----------------|--|---|--------------------------------|--|
| 2 | Petition for Reinstatement under 37 CFR 11.60(c) | 5 | \$1,680 | \$8,400 |
| | Totals | 5 | - - - | \$8,400 |

Postage

Although the USPTO prefers that the items in this information collection be submitted electronically, responses may be submitted by mail through the United States Postal

Service (USPS). The USPTO estimates that 1% of the 221 items will be submitted in the mail resulting in 2 mailed items. The USPTO estimates that the average postage cost for a mailed submission, using a Priority Mail 2-day flat rate legal envelope, will be \$9.25. Therefore, the USPTO estimates \$19 in postage costs associated with this information collection.

- 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.**

There are no government costs associated with registered practitioners maintaining their records (recordkeeping).

Various levels of pay grades reflect the different actions involved in reaching the assumptions behind the time and burden to the government for collecting and processing the information in this information collection. The Director of the OED and a combination of staff attorneys provide the professional effort to review the complaints/violations, generate inquiries as needed, review responses, and perform other follow-up activities. The clerical staff establish and maintain the files and associated updates. Paralegals primarily track all case status and docket information. Administrator and analyst efforts generally represent coordination with other functional areas; this type of coordination would primarily track against the unit of work from which all other disciplinary efforts spring, i.e., the complaint/violation reports.

The USPTO estimates that items in this information collection will be processed by OED staff ranging from GS-9 to SES grades. The Agency added an additional 30% to the current [OPM hourly wage rates of the Washington-Baltimore-Arlington, DC-MD-VA-WV-PA locality](#), to account for fully loaded hourly rates.

Table 6 calculates the processing hours and costs to the Federal Government.

Table 6: Burden Hour/Burden Cost to the Federal Government

| Item No. | Item | Estimated Response Time (hours) (a) | Estimated Annual Responses (b) | Estimated Annual Burden Hours (a) x (b) = (c) | Rate (\$/hr) (d) | Total Cost (\$/hr) (c) x (d) = (e) |
|----------|--|-------------------------------------|--------------------------------|---|------------------|------------------------------------|
| 1 | Complaint/Violation Reporting Director Staff Attorneys | 6 | 216 | 1,296 | \$117.05 | \$151,697 |
| | | 16 | | 3,456 | \$92.50 | \$319,680 |
| 2 | Petition for Reinstatement under 37 CFR 11.60(c) | 2 | 5 | 10 | \$82.07 | \$821 |
| 3 | Recordkeeping Maintenance and Disclosure | NA | NA | NA | NA | NA |

| | | | | | | |
|---|--|-------|-----|-------|-------|-----------|
| 4 | Recordkeeping Maintenance Regarding Practitioners Under Suspension or Exclusion from the USPTO | NA | NA | NA | NA | NA |
| | Totals | - - - | 221 | 4,752 | - - - | \$472,198 |

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 | 13,190 | 0 | 5 | 2,040 | 0 | 11,145 |
| Annual Time Burden (Hr) | 14,192 | 0 | 5 | 1,722 | 0 | 12,465 |
| Annual Cost Burden (\$) | 8,419 | 0 | 8,400 | -1,612 | 0 | 1,631 |

Program Change Due to Agency Discretion in Annual Number of Responses, Annual Time Burden, and Annual Costs Burden

With this renewal, USPTO is adding a new item (Petition for Reinstatement under the provisions section 11.60(c)). This item adds additional responses (+5) and burden hours (+5) to the information collection. This item also has a related fee which adds annual cost burden (+\$8,400).

Change Due to Adjustment in Agency Estimate in Annual Number of Responses, Annual Time Burden, and Annual Cost Burden

For this renewal, the USPTO estimates that the items in this information collection will naturally fluctuate based on respondent need (+2,040 responses and + 1,722 hours). Overall, USPTO is estimating that these adjustments result in fewer annual (non-hour) costs due to respondents filling less items that have associated fees and postage costs (-\$1,612).

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.**

There are no forms in this information collection. Therefore, the display of the OMB Control Number and the expiration date are not applicable.

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

No exceptions to the certificate statement are included in this collection of information.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection of information does not employ statistical methods.