

JUSTIFICATION FOR NONMATERIAL/NONSUBSTANTIVE CHANGE
Third-Party Submissions and Protests
OMB Control Number 0651-0062

Background

The United States Patent and Trademark Office (USPTO) is required by 35 U.S.C. § 131 *et seq.*, to examine an application for patent and, when appropriate, issue a patent. The provisions of 35 U.S.C. §§ 122(c), 122(e), 131, and 151, as well as 37 CFR 1.290 and 1.291, limit the ability of a third-party to have information entered and considered in, or to protest, a patent application pending before the USPTO.

37 CFR 1.290 provides a mechanism for third-parties to submit to the USPTO, for consideration and inclusion in the record of a patent application, any patents, published patent applications, or other printed publications of potential relevance to the examination of the application.

A third-party submission under 37 CFR 1.290 may be made in any nonprovisional utility, design, and plant application, including any continuing application. A third-party submission under 37 CFR 1.290 must include a concise description of the asserted relevance of each document submitted and must be submitted within a certain statutorily specified time period.

37 CFR 1.291 permits a member of the public to file a protest against a pending application. Protests pursuant to 37 CFR 1.291 are supported by a separate statutory provision from third-party submissions under 37 CFR 1.290. As a result, there are several differences between protests and third-party submissions. For more information, compare chapter 1900 and section 1134 of the Manual of Patent Examining Procedure (9th Edition, Rev. 01.2024).

In support of RIN 0651-AD64 (Setting and Adjusting Patent Fees During Fiscal Year 2025; 89 FRN 91898)¹, the USPTO is changing five fees in this information collection.

Table 1: Changes in Fee Amount

Item No.	Fee Code	Item	Current Fee	New Fee	Changes in Fee Amount
1	1818	Third-Party Submissions in Non-Issued Applications (undiscounted entity)	\$180	\$195	+\$15
1	2818	Third-Party Submissions in Non-Issued Applications (small and micro entities)	\$72	\$78	+\$6
2	1830	Protests by the Public Against Pending Applications Under 37 CFR 1.291—second or subsequent protest by the same real party in interest (undiscounted entity)	\$140	\$150	+\$10
2	2830	Protests by the Public Against Pending Applications	\$56	\$60	+\$4

¹ <https://www.govinfo.gov/content/pkg/FR-2024-11-20/pdf/2024-26821.pdf>

		Under 37 CFR 1.291—second or subsequent protest by the same real party in interest (small entity)			
2	3830	Protests by the Public Against Pending Applications Under 37 CFR 1.291—second or subsequent protest by the same real party in interest (micro entity)	\$28	\$30	+\$2

Table 2: Proposed Burden

Item No.	Fee Code	Item	Reponses (a)	New Fee (b)	New Non-hour Cost Burden (a) x (b) = (c)
1	1818	Third-Party Submissions in Non-Issued Applications (undiscounted entity)	742	\$195	\$144,690
1	2818	Third-Party Submissions in Non-Issued Applications (small and micro entities)	275	\$78	\$21,450
2	1830	Protests by the Public Against Pending Applications Under 37 CFR 1.291—second or subsequent protest by the same real party in interest (undiscounted entity)	1	\$160	\$160
2	2830	Protests by the Public Against Pending Applications Under 37 CFR 1.291—second or subsequent protest by the same real party in interest (small entity)	1	\$60	\$60
2	3830	Protests by the Public Against Pending Applications Under 37 CFR 1.291—second or subsequent protest by the same real party in interest (micro entity)	1	\$30	\$30
		Totals	1,018	- - -	\$166,390

Table 3: Changes in Cost

Item No.	Fee Code	Items	Current Cost (a)	New Cost (b)	Change in Non-hour Cost Burden (b) - (a) = (c)
1	1818	Third-Party Submissions in Non-Issued Applications (undiscounted entity)	\$133,560	\$144,690	\$11,130
1	2818	Third-Party Submissions in Non-Issued Applications (small and micro entities)	\$19,800	\$21,450	\$1,650
2	1830	Protests by the Public Against Pending Applications Under 37 CFR 1.291—second or subsequent protest by the same real party in interest (undiscounted entity)	\$140	\$160	\$20
2	2830	Protests by the Public Against Pending Applications Under 37 CFR 1.291—second or subsequent protest by the same real party in interest (small entity)	\$56	\$60	\$4
2	3830	Protests by the Public Against Pending Applications Under 37 CFR 1.291—second or subsequent protest by the same real party in interest (micro entity)	\$28	\$30	\$2
		Totals	\$153,584	\$166,390	\$12,806

Summary of Changes

The aforementioned rulemaking results in the revision of five fees, with an increase of \$12,806 in annual non-hourly costs to collection 0651-0062.

Changes in Burden

Burden Type	Currently Approved	Proposed Change	New Estimate
Non-hourly Cost Burden	\$153,686	+\$12,806	\$166,492

0651-0062's revised burden is as follows:

- 1,033 annual responses (unchanged)
- 10,330 annual hourly burden (unchanged)
- \$166,492 in annual non-hourly burden costs