SUPPORTING STATEMENT
United States Patent and Trademark Office
Matters Related to First Inventor to File
OMB CONTROL NUMBER 0651-0071
2025

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

Section 3 of the Leahy-Smith America Invents Act (AIA), *inter alia*, amended 35 U.S.C. 102 and 103 consistent with the objectives of the AIA, including the conversion of the United States patent system from a "first to invent" system to a "first inventor to file" system. The changes to 35 U.S.C. 102 and 103 in section 3 of the AIA went into effect on March 16, 2013, but apply only to certain applications filed on or after March 16, 2013.

This information collection covers information required by 37 CFR 1.55(k), 1.78(a)(6), and 1.78(d)(6) to assist the USPTO in determining whether an application is subject to 35 U.S.C. 102 and 103 as amended by Section 3 of the AIA, or 35 U.S.C. 102 and 103 as in effect on March 15, 2013. The information is only required in nonprovisional applications filed on or after March 16, 2013, that claim foreign priority to, or domestic benefit of, an application filed before March 16, 2013. Moreover, the information is not required if the nonprovisional application filed on or after March 16, 2013, claims the benefit of an earlier application in which a statement under 37 CFR 1.55(k), 1.78(a)(6), or 1.78(d)(6) has already been filed. Given the passage of time, it is increasingly rare for a newly filed nonprovisional application to claim foreign priority to, or domestic benefit of, an application filed before March 16, 2013, without also claiming benefit of an earlier application in which the statement has already been filed. Accordingly, the estimated responses for this collection continue to decrease.

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

Table 1: Information Requirements

Item No.	Requirement	Statute	Regulation
1	Submissions Under 37 CFR 1.55(k)	35 U.S.C. §§ 2(b)(2) and 119	37 CFR 1.55(k)
2	Submissions Under 37 CFR 1.78(a)(6)	35 U.S.C. §§ 2(b)(2) and 120	37 CFR 1.78(a)(6)
3	Submissions Under 37 CFR 1.78(d)(6)	35 U.S.C. §§ 2(b)(2) and 120	37 CFR 1.78(d)(6)

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The items in this information collection are used by the USPTO to determine whether a patent application is subject to 35 U.S.C. 102 and 103 as amended by Section 3 of the Leahy-Smith America Invents Act (AIA), or 35 U.S.C. 102 and 103, as in effect on March 15, 2013.

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

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

Table 2: Needs and Uses

Item No.	Form and Function	Form No.	Needs and Uses
1	Submissions Under 37 CFR 1.55(k)	No Form	• Used by patent applicants to provide a statement if a nonprovisional application filed on or after March 16, 2013, other than a nonprovisional international design application, claims priority to a foreign application filed prior to March 16, 2013, and also contains, or contained at any time, a claim to a claimed invention that as an effective filing date as defined in § 1.109 that is on or after March 16, 2013. • Used by the USPTO to readily determine whether the nonprovisional application is subject to the changes to 35 U.S.C. §§ 102 and 103 in the AIA.
2	Submissions Under 37 CFR 1.78(a)(6)	No Form	• Used by patent applicants to provide a statement if a nonprovisional application filed on or after March 16, 2013, claims the benefit of the filing date of a provisional application filed prior to March 16, 2013, and also contains, or contained at any time, a claim to a claimed invention that has an effective filing date as defined in § 1.109 that is on or after March 16, 2013. • Used by the USPTO to readily determine whether the nonprovisional application is subject to the changes to 35 U.S.C. §§ 102 and 103 in the AIA.
3	Submissions Under 37 CFR 1.78(d)(6)	No Form	• Used by patent applicants to provide a statement if a nonprovisional application filed on or after March 16, 2013, other than a nonprovisional international design application, claims the benefit of the filing date of a nonprovisional application or an international application designating the United States filed prior to March 16, 2013, and also contains, or contained at any time, a claim to a claimed invention that has an effective filing date as defined in § 1.109 that is on or after March 16, 2013. • Used by the USPTO to readily determine whether the nonprovisional application filed on or after March 16, 2013, is subject to the changes to 35 U.S.C. §§ 102 and 103 in the AIA.

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 prefers to collect the information in this information collection electronically through the USPTO patent electronic filing system (Patent Center), the USPTO's online filing and viewing system for patent applications and related documents. Patent Center allows customers to electronically file the information in this collection through their standard web browser without downloading special software, changing their documentation preparation tools, or altering their workflow processes. Patent Center offers many benefits to filers, including immediate notification that a submission has been received by the USPTO, automated processing of requests, and avoidance of postage or other paper delivery costs. For those respondents who choose to not file the information in this collection electronically, the information may be submitted by mail or hand delivery.

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 USPTO has determined that the information covered by this information collection is not collected elsewhere and does not result in a duplication of effort.

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

This collection of information does not impose a significant economic impact on a substantial number of small entities. The same information is required from every member of the public in the applicable situation and is not be available from any other source. In addition, there are no filing fees associated with this information collection.

6. **Describe the consequence to federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

Less frequent collection of submissions under 37 CFR 1.55(k), 1.78(a)(6), and 1.78(d)(6) would cause examination costs to increase, and could result in confusion as to the applicable version of 35 U.S.C. 102 and/or 103 (i.e., AIA versus pre-AIA) to be used in determining patentability.

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 publications 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 Notice was published in the *Federal Register* on October 9, 2024 (89 FR 81894).[1] The comment period ended December 9, 2024. The USPTO received no public comments in response to the notice.

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, inventor groups, and users of its 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.

[1] https://www.govinfo.gov/content/pkg/FR-2024-10-09/pdf/2024-23349.pdf.

This information collection does not involve a payment or gift to any respondent.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy. If the collection requires a system of records notice (SORN) or privacy impact assessment (PIA), those should be cited and described here.

Confidentiality

The confidentiality of patent applications is governed by statute (35 U.S.C. 122) and regulation (37 CFR 1.11 and 1.14). The USPTO has a legal obligation to maintain the confidentiality of the contents of unpublished patent applications and related documents. Upon publication of an application or issuance of a patent, the patent application file is made available to the public, subject to the provisions for providing only a redacted copy of the file contents (37 CFR 1.11(a) and 1.217). The items in this information collection are filed in a patent application. Accordingly, the USPTO will maintain the confidentiality of an item received under this information collection until the application in which it is filed publishes or issues as a patent.

Privacy Act System of Records Information

This information collection contains information which is subject to the Privacy Act. This information is collected on documents related to patent applications. Privacy Act Statements are included on these forms. The following System of Records Notices (SORNs) provide privacy disclosures and information about the USPTO's handling of any personally identifiable information (PII) that may be included when submitting the information of this collection.

The applicable Privacy Act System of Records Notice for this information collection is COMMERCE/PAT-TM-7 Patent Application Files , available at 78 FR 19243 (March 29, 2013).[2] The purpose of PAT-TM 7 is to disclose how the USPTO intends to use, maintain, and protect the information that it has collected to carry out the duties of the USPTO to examine patent applications and issue patents. PAT-TM 7 includes all applicant records including name, citizenship, residence, post office address, and other information pertaining to the applicant's activities in connection with the invention for which a patent is sought or has been granted.

Information in this system of records is derived from applicants for patent, including inventors, legal representatives for deceased or incapacitated inventors, and other persons authorized by law to make applications for patent. Patents applications are maintained in confidence as required by 35 U.S.C. 122(a) until the application is published or issued as a patent. Categories of records in the system comprise the following: oath or declaration of applicant including name, citizenship, residence, post

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

office address, and other information pertaining to the applicant's activities in connection with the invention for which a patent is sought.

The information in PAT-TM 7 is protected from disclosure to third parties in accordance with the Privacy Act until the application is published under 35 U.S.C. 122(b) or issued as a patent under 35 U.S.C. 153. Prior to application publication or patent issuance, the information in PAT-TM 7 is protected from disclosure to third parties in accordance with the Privacy Act, except that disclosure is permitted for the following routine uses including, but not limited: to law enforcement and investigation in the event that the system of records indicates a violation or potential violation of law; to a federal, state, local, or international agency, in response to its request regarding personnel matters; to an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law; to non-federal personnel under contract to the agency; to a court for adjudication and litigation; to the Department of Justice for Freedom of Information Act (FOIA) assistance; to members of Congress working on behalf of an individual; to the General Services Administration for inspection of records: to the Office of Management and Budget (OMB) for legislative coordination and clearance; to the Office of Personal Management (OPM) for personnel research purposes; to the General Services Administration for the inspection of records.

Privacy Impact Assessment

The data in this system of records may also be associated with an IT system that has a Privacy Impact Assessment (PIA) which provides additional information about how data is handled and maintained. The following IT systems may include data collected as a part of this information collection:

Data Conversion Laboratory Patent Support (DCLPS)
Enterprise Data Services System – Databricks (EDS-DBX)
Flatirons Patent Data and Document Management (Flatirons PDDM)
Global Patent Solutions (GPS) System
International Data Exchange Cloud (IDE-C)
Information Delivery Product (IDP)
Information Dissemination Support System (IDSS)
Landon IP Information System
Open Data-Big Data Master System (OD-BD MS)
Patent Capture and Application Processing System - Examination Support (PCAPS-ES)
Patent Capture and Application Processing System - Initial Processing (PCAPS-IP)
Patent End to End (PE2E)
Patent Trial and Appeal Board End to End (PTAB E2E)
Patent Search System - Primary Search and Retrieval (PSS-PS)
Patent Business and Content Management Services (PBCMS) EventHub
Patent Exam Center (PEC)
Patent Examination Data Search (PEDS)
Patent Public Search (PPUBS)
Patent Search System - Primary Search and Retrieval System (PSS-PS)

Patent Trial and Appeal Case Tracking System (P-TACTS)
Reed Technology and Information Services Inc. (RTIS) Patent Data Capture (PDCap)
Reed Technology and Information Services Inc. (RTIS) Public Data Dissemination (RTIS PDD)
Serco Patent Processing System (PPS)
Trilateral Network (TRINET)
VASTEC Data Conversion System (VASTEC DCS)

More information about these PIAs is available through the Department of Commerce's Office of Privacy and Open Government.[3]

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 is considered to be sensitive.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.**
- **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**

[3] https://www.commerce.gov/opog/privacy/PIA/USPTO-PIA.

The USPTO estimates that it will receive approximately 50 responses per year from 50 respondents for this information collection, with approximately 25% of these responses submitted by small entities.

- **Burden Hour Calculation Factors**
  The USPTO estimates that the responses in this information collection will take the public 2 hours to complete. This includes the time to gather the necessary information, create the document, and submit the completed item to the USPTO.

  These estimates are based on the USPTO's longstanding institutional knowledge of and experience with the type of information collected and the length of time necessary to complete responses containing similar or like information. Using these burden factors, USPTO estimates that the total respondent hourly burden for this information collection is 100 hours per year.

- **Cost Burden Calculation Factors**
  The USPTO uses a professional rate of $447 per hour for respondent cost burden calculations, which is the mean rate of intellectual property attorneys in private firms as shown in the 2023 Report of the Economic Survey published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association (AIPLA). Using these hourly rates, the USPTO estimates that the total respondent cost burden for this information collection is $44,700 per year.

Table 3: Total Burden Hours and Hourly Costs to Private Sector 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[4] ($/hour) (f)	Estimated Annual Respondent Cost Burden (e) x (f) = (g)
1	Submissions Under 37 CFR 1.55(k)	25	1	25	2	50	$447	$22,350
2	Submissions Under 37 CFR 1.78(a)(6)	20	1	20	2	40	$447	$17,880
3	Submissions Under 37 CFR 1.78(d)(6)	5	1	5	2	10	$447	$4,470
	Totals	**50**	**- - -**	**50**	**- - -**	**100**	**- - -**	**$44,700**

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**

[4] 2023 Report of the Economic Survey, published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association (AIPLA); pg. F–41. The USPTO uses the average billing rate for intellectual property work in all firms which is $447 per hour (https://www.aipla.org/home/news-publications/economic-survey).

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 collection has non-hourly cost burdens in postage costs for mailing items to the USPTO.

The total non-hour respondent cost burden for this collection is estimated to be $11 per year in postage.

The USPTO expects that at most 1 response in this collection will be submitted by mail. The USPTO estimates that the average postage cost for a mailed submission, using a Priority Mail legal flat rate legal envelope, will be $10.75. Therefore, the USPTO estimates a total postage cost of $11 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 estimates that it takes a GS-7, step 1 employee approximately 15 minutes (0.25 hours) on average to process the submissions under 37 CFR 1.55(k), 1.78(a)(6), and 1.78(d)(6).

The USPTO estimates that the cost of a GS-7, step 1 employee is $34.84 per hour (GS hourly rate of $26.80 with 30% ($8.04) added for benefits and overhead).

Table 4 calculates the burden hours and costs to the federal government for processing the items in this information collection.

Table 4: Burden Hour/Burden Cost to the Federal Government

Item No.	Item	Estimated Annual Responses (a)	Estimated Time For Response (hours) (b)	Estimated Burden (hour/year) (a) x (b) = (c)	Rate[5] ($/hour) (d)	Estimated Annual Respondent Cost Burden (c) x (d) = (e)
1	Submissions Under CFR 1.55(k)	25	0.25	6	$34.84	$209
2	Submissions Under 37 CFR 1.78(a)(6)	20	0.25	5	$34.84	$174
3	Submissions Under 37 CFR 1.78(d)(6)	5	0.25	1	$34.84	$35
	Totals	**50**	**- - -**	**12**	**- - -**	**$418**

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

Table 5: ICR Summary of Burden

	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	50	0	0	-94	0	144
Annual Time Burden (Hr)	100	0	0	-188	0	288
Annual Cost Burden ($)	11	0	0	3	0	8

Changes Since the Publication of the 60-Day Notice

Since the publication of the 60-Day Notice in the Federal Register, the USPTO has updated its postage rates to reflect more accurate estimates. This results in an increase of $1 in non-hourly cost burden, for a new estimated total annual burden of $11.

Change in Responses and Hourly Burden due to Adjustment in Agency Estimate

The total number of respondents has decreased by 94 due to increasing rarity for a newly filed nonprovisional application to claim foreign priority to, or domestic benefit of, an application filed before March 16, 2013, without also claiming benefit of an earlier application in which the statement has already been filed. This decrease in the number of respondents and responses results in a decrease of 188 hours in the annual time burden estimates.

[5] https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2024/DCB_h.pdf.

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

For this renewal, the USPTO estimates that the total annual non-hour costs will increase slightly by $3 from the previous approval. This increase is due to increased postage rates.

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 is not applicable.

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.