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Via regulations.gov

Justin Isaac and Raul Tamayo
Office of the Chief Administrative Officer
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria VA 22313-1450

Dear Mr. Isaac and Mr. Tamayo:

The USPTO should amend this ICR to request continued approval for *permitted* DOCX filing, but to remove any request for clearance for the § 1.16(u) surcharge for non-DOCX filing. As even the USPTO admits (by failure to explain to the contrary), DOCX cannot possibly and does not work reliably. Users should be permitted to file in whatever full-text form their word processor reliably outputs, whether that be DOCX, PDF, or PDF/A, at the user's choice, with no surcharge.

At the time the USPTO promulgated this regulation, the PTO estimated its cost savings per filing at $3.15 per application.[1] Now, even on the laughably-low estimate of 0.5 hours that the USPTO finally concedes (now abandoning its 2019-2023 estimates of zero), the cost to the public is $223.50 per application. A 71-to-1 ratio is "shifting disproportionate costs or burdens onto the public" forbidden by 5 C.F.R. § 1320.5(d)(1)(iii). 5 U.S.C. § 1320.5(d)(1)(i) requires the agency to "demonstrate that it has taken every reasonable step to ensure that the proposed collection of information … Is the least burdensome necessary for the proper performance of the agency's functions." By the agency's own admission, PDF filing is "the least burdensome" approach.

Further, as noted in § 2 of this letter, the USPTO's burden estimates are laughably low, by a factor of 10.

And finally, 44 U.S.C. § 3506(c)(3)(B) and 5 C.F.R. § 1320.9(b) require the USPTO to limit collecting information that is "unnecessarily duplicative." 5 U.S.C. § 1320.5(d)(1)(ii)

[1] U.S. Patent and Trademark Office, *Setting and Adjusting Patent Fees During Fiscal Year 2020*, 85 Fed. Reg. 46932, 46947 col. 2 (Aug. 3, 2020).

elaborates: the agency "shall demonstrate that it has taken every reasonable step to ensure that the proposed collection of information … Is not duplicative of information otherwise accessible to the agency." the USPTO itself—and every known private sector guide—recommends as best practice that DOCX filing be accompanied by an auxiliary PDF. The USPTO has never offered a good explanation for how a $3.15 per application savings can justify a duplicative collection.

The underlying factual dispute is that the USPTO claims that DOCX is designed as an interoperable format that guarantees that content will be rendered consistently on all computers, and that that consistency will be preserved over time with new software releases. The DOCX standards documents make no such representation, and make a number of contrary statements, discussed in the table at page 8 of this letter.[2] Microsoft's documentation state to the contrary (see discussion of "extensions" at pages 8 and 10). Many members of the public have written to provide examples of where a single DOCX file appears differently when viewed or printed from different computers. Particularly, mathematical formulas change remarkably when a DOCX file is generated on one computer and rendered on another. Even base text can change. The USPTO has never confronted the contrary evidence, except to make unsupported claims that are contrary to all evidence, and that demonstrate lack of understanding of basic technological vocabulary.

In contrast, PDF, especially the PDF/A variant ("A" is for "archival") is designed ***specifically and exactly*** for the purposes the USPTO desires (and that's why it's the format used by federal courts and all other agencies. The PDF/A standard[3] states that **PDF/A is designed to** "**maintain[ ] … properties, such as the logical organization of pages, sections, and paragraphs, machine recoverable text stream in natural reading order.**" There is no analogous commitment in the DOCX standard. The Microsoft documentation says *the opposite*.[4] The USPTO has never identified any reason to believe the standards document.

In its 2023 ICR Supporting Statement,[5] the Office claimed that "In comparison to DOCX, rich text formatted PDF does not provide a reliable source of structured text." In spite of the obligation of 44 U.S.C. § 3508(c)(3) and 5 C.F.R. § 1320.8(a)(4) for "objective support," the USPTO stands on nothing more than personal opinion of Mr. Isaac and Mr. Tamayo. The USPTO has produced no "objective support" for this claim. The only document generated by

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[2] ECMA-376, Office Open XML file formats, https://ecma-international.org/publications-and-standards/standards/ecma-376/ and ISO/IEC 29500-1:2016, *Information technology — Document description and processing languages — Office Open XML File Formats*, https://www.iso.org/standard/71691.html ECMA-376 is available for free at the preceding URL. I uploaded the relevant parts of ISO/IEC 29500 at the OMB web site, https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202309-0651-002 There's really no excuse for not reading it.

[3] ISO 19005-4:2020 Document management — Electronic document file format for long-term preservation, Introduction, page vi, https://www.iso.org/standard/71832.html or https://www.pdfa-inc.org/cart/?add-to-cart=594

[4] Microsoft, [MS-DOCX]: Word Extensions to the Office Open XML (.docx) File Format, https://learn.microsoft.com/en-us/openspecs/office_standards/ms-docx/b839fe1f-e1ca-4fa6-8c26-5954d0abbccd

[5] Supporting Statement, https://www.reginfo.gov/public/do/DownloadDocument?objectID=148432201 (Dec. 7, 2023).

the USPTO is the "yearlong study" referred to in the Final Rule notice.[6] That "yearlong study" was withheld from the public during rulemaking (unlawfully). When we obtained it by FOIA, it stated the opposite of the USPTO's representation now: that PDF was "the right approach." The USPTO has produced no document that suggests that DOCX was designed uniformity as a design consideration; the DOCX standards documents and Microsoft's own documentation state otherwise. The USPTO has offered no counter to the PDF/A standard document that PDF/A is designed to "maintain[ ] … properties, such as the logical organization of pages, sections, and paragraphs, machine recoverable text stream in natural reading order."[7] It's clear that the USPTO has never actually looked at the standard document: the URL in the Final Rule notice and 2023 Supporting Statement for ISO/IEC 29500 is wrong.[8] And the USPTO has never given any meaningful response to the public's comments advancing PDF/A as the solution to the USPTO's problem.

Perhaps, the USPTO's claims that DOCX is a "reliable source of structured text" and PDF/A is not can be excused as aggressive advocacy of technologically ignorant USPTO employees who are unfamiliar with basic technological vocabulary, and ignorant of the technology of document preservation. Below, we present *evidence* that DOCX is *not* reliable, was not designed to be reliable, and PDF/A is. Unless the USPTO engages issue by issue with "objective support," any continued representation that DOCX is "a reliable source of structured text" may be taken as intentionally false.

1. A recent personal observation that DOCX files appear differently even on two different versions of Word

Many letters from the public have made the same point: the DOCX standard does not guarantee interoperability or reproducibility across implementations or across time.

In February 2026, I had a direct example. A client sent me a draft patent application that he had composed in Microsoft Word with the help of AI. I opened it in Word for Microsoft Office Professional Plus 2021. I saw this, obviously incorrect:

Signal·σ□:·

I went to a different computer, one that runs Microsoft 365, the Software-as-a-Service version. I opened the same document (or rather a different save out of the same email, so the identical document content but a different copy) and opened it and got this:

Signal σ_1:

I don't know whether the problem is that the two different versions of Word, or different fonts loaded on two different computers, or different equation editor plug-ins. But what is clear is that

[6] An entire copy of the "yearlong study" obtained by FOIA is provided as Exhibit A in the Letter 152 Patent Practitioners, https://www.reginfo.gov/public/do/DownloadDocument?objectID=135639300

[7] See note 3 *supra*.

[8] It is apparent that the PTO has never ***read*** the standard hasn't a clue whist it's talking about. The URLs given in the PTO's Federal Register notices and OMB Supporting Statements are incorrect. See footnote 2 *supra*.

neither the ISO 29500 standard nor Microsoft guarantee that a given DOCX file will open the same on two different computers. In fact, Microsoft all but promises the opposite.[9]

Microsoft does not even guarantee that a DOCX will open the same *across two different installations of Word*.[4] There is *no possible way* that a third-party product (like the USPTO's DOCX intake) can guarantee consistency, if DOCX format changes over time. Since the USPTO does not tell us which temporal dialect of DOCX they implement (and they can't possibly keep up with Microsoft's changes, which occur several times a year[4] and are reflected immediately in Office 360 SaaS, with no apparent warning to third-party vendors), the USPTO *cannot possibly* guarantee correctness over time.

2. The 2026 Notice Omits significant burden

The April 2026 60-day notice gives the following burden estimates. The notice gives ***no*** rationale or basis for the "estimated time."

TABLE 1—TOTAL REPORTING BURDEN HOURS AND HOURLY COSTS TO PRIVATE SECTOR RESPONDENTS

Item No.	Item	Estimated annual respondents (a)	Responses per respondent (b)	Estimated annual responses (a) × (b) = (c)	Estimated time for response (hours) (d)	Estimated burden (hour/year) (c) × (d) = (e)	Rate [3] ($/hour) (f)	Estimated annual respondent cost burden (e) × (f) = (g)
1	DOCX submission of Noncontinuing, Nonprovisional Utility Applications.	198,077	1	198,077	0.50 (30 minutes)	99,039	$447	$44,270,433
2	DOCX submission of Continuation/Divisional of an International Application.	24,066	1	24,066	0.50 (30 minutes)	12,033	447	5,378,751
3	DOCX submission of Utility Continuation/Divisional Applications.	105,518	1	105,518	0.50 (30 minutes)	52,759	447	23,583,273
4	DOCX submission of Utility Continuation-in-Part Applications.	10,182	1	10,182	0.50 (30 minutes)	5,091	447	2,275,677
	Totals	337,843		337,843		168,922		75,508,134

(A) The USPTO's estimates are low by factor of ten, underestimated by excluding proofreading burden

The USPTO's 60-day notice gives ***no basis whatsoever*** for the estimates of 0.5 hours; the number appears to be pulled out of the thinnest of thin air.

0.5 hours squares with the cost of managing three duplicative copies ((a) the user-generated PDF copy that was generated and was the upload document before 2023 and that is still, by best practice above, generated and submitted as the "auxiliary PDF" check document, (b) the DOCX copy originally generated by the user and uploaded, and the (c) "feedback document" DOCX generated by the USPTO, which must be saved and compared to (b)) To all appearances, the USPTO has booked ***only*** that 0.5 hours.

However, burden includes at least two more components: "completing and reviewing" or proofreading, 44 U.S.C. § 3502(2)(E), and filing correction papers.

[9] Word Extensions of OOXML, note 4 *supra*.

In the Federal Register, the USPTO acknowledged that the USPTO's processing of DOCX, was error prone, and "strongly encouraged" proofreading:

> Applicants are strongly encouraged to review their applications, including the USPTO-generated PDF, shortly after filing the application to identify any errors or discrepancies in the record, as discussed above. The applicant should file any necessary petition to correct the record early in prosecution and promptly after discovering any errors or discrepancies.[10]

Similarly, a recent post[11] by Pushpendra Dwivedi on IPWatchdog.com (one of the three most-viewed blogs in the patent field) reminded the public that DOCX filing is more risky than PDF filing, and that protecting against those risks requires certain "best practices." This is a direct quote, except to replace a bullet list with numbered items so that our comments can refer to those numbers:

> [T]he proposed DOCX filing system has raised concerns among practitioners. They fear that the USPTO's conversion of the "User-Submitted DOCX" into a "USPTO-generated DOCX" and "USPTO-generated PDF" could alter the application content or lose evidence, since the "User-submitted DOCX" is not preserved. Moreover, the editable nature of DOCX could lead to unintentional changes before filing.
>
> **Mastering the Art of DOCX Submissions: Best Practices**
>
> Now that the fundamental understanding of DOCX filing is established, let's delve into mastering it. Consider adopting these best practices when submitting your documents in DOCX format:
>
> 1. **Follow the USPTO guidelines** when you prepare your application in DOCX format to avoid errors during the filing process.
> 2. **Save the feedback document** that Patent Center creates when you submit your application. This document may serve as evidence in case of any litigation related to misuse.
> 3. **Submit a supplementary PDF** along with the DOCX filing by 17th January 2024, unless the PTO extends the deadline.
> 4. **Review your submission** a month or two after filing and before the 1-year filing deadline expires to fix any issues that you may have overlooked initially.
> 5. **File your documents early**, so that you and your staff or attorneys can examine the feedback report and take the necessary actions.
> 6. **Compare the documents** to ensure no unintentional changes are there. Mark this is a mandatory step. You must compare the User-submitted DOCX to the USPTO-generated DOCX; the User-submitted DOCX to the USPTO-generated PDF; a User-submitted PDF to the USPTO-generated DOCX; and the User-submitted PDF to the USPTO-generated PDF.

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[10] USPTO, Filing Patent Applications in DOCX Format, 87 FR 25226, 25228 (Apr. 28, 2022)

[11] Pushpendra Dwivedi, Mastering USPTO DOCX Formats: The Ultimate Guide, https://ipwatchdog.com/2024/03/11/mastering-uspto-docx-formats-ultimate-guide (Mar. 11, 2024)

> Just realize that 99-plus percent of the time it works…If 99% of my deposits in a bank were fine, I would still be very upset about the 1% where they got it wrong.

Several other blog posts note the importance of careful proofreading to overcome the error-prone DOCX filing;[12]

(B) The USPTO's estimates to not include plausible estimates of error correction filings

In past filings, the USPTO acknowledged that some number of requests for correction had to be filed. The USPTO failed to book that time in 2023, and now books these "best practices" at zero.

Past letters to the USPTO and to OMB have estimated the burden of proofreading (Mr. Dwivedi's bullets 4 and 6) plus error correction. These past letters noted that a small number of these proofreading exercises will locate an error, and that correcting that error will be very expensive. Nonetheless, careful proofreading is required, because when the USPTO introduces an error, there may be no opportunity whatsoever to correct it (if it forms the basis for a foreign filing), and the cost of seeking correction will be disproportionately high. The estimates in the 60-day notice ignore these large cost drivers—they may be few in number, but they must nonetheless be included in the average, which drives the total to $200 million to $600 million.[13,14,15,16]

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[12] PatentDocs, USPTO Allows Applicants to File PDF with DOCX Submissions on Temporary Basis, https://patentdocs.org/2022/05/03/uspto-allows-applicants-to-file-pdf-with-docx-submissions-on-temporary-basis; Ant-Like Persistence, *USPTO fails to support DOCX from non-Microsoft word processors*,, https://blog.oppedahl.com/uspto-fails-to-support-docx-from-non-microsoft-word-processors/

[13] Estimate of Kilpatrick Townsend, estimates proofreading at 3 hours, and offers no estimate of the cost of correction. https://www.reginfo.gov/public/do/DownloadDocument?objectID=135640600

[14] Estimate of David Boundy, Exhibit 7 to letter of 152 Patent Practitioners, note 6 *supra*, at Exhibit 7, pages 3-5.

[15] Bradley Forrest, a former Group Chief IP Counsel at IBM estimates that the proofreading costs that must be invested in *every* patent application, and the error-correction costs that must be borne rarely but at great expense, total at least $200 million per year. Estimate of Bradley Forrest, Exhibit 6 to letter of 152 Patent Practitioners, note 6 *supra*.

[16] Consensus estimate of One Hundred Seven Patent Practitioners is about $600 million. https://www.reginfo.gov/public/do/DownloadDocument?objectID=135640900

3. The USPTO's DOCX rule (used under acknowledged best practices) requires duplicative information collection

The USPTO's "DOCX Filing Tips & Best Practices" recommends filing an auxiliary PDF.[17] The USPTO has submitted ***no evidence***—only unsupported bloviation—that a PDF submission (generated in text form, as almost all are) is in any way insufficient to meet all requirements that the USPTO has (see the table row discussing "preservation" and "natural reading order" of PDF/A, on page 9).

4. DOCX does not purport to be an "interoperability" standard – the USPTO's past claims are false

In past Federal Register notices and regulatory filings at OIRA, the USPTO has claimed that DOCX is "a reliable source of structured text"[18] and "presents documents, including text and formatting, in a manner that is independent of software, hardware, or operating systems."[19] The USPTO has cited no source for these claims—they appear to be made up out of thin air.

Not all standards purport to achieve the same ends. Some standards merely purport to set a standard for a minimum conforming implementation. For example, the Fortran, C, C++ and similar language standards define a minimum baseline for a conforming implementation, but do not purport to allow interoperability. A legal program in any of these languages can yield entirely different results on different computers. ISO 29500, the DOCX standard, is this kind of ***non***-interoperability standard.

In contrast, some standards are "interoperability" standards. An interoperability standard ensures that all conforming implementations will *exactly* work as intended with all others. Examples include cell phone standards, WiFi, PDF, FHIR (Fast Healthcare Interoperability Resources), and FIX (Financial Information Exchange). PDF is an interoperability standard: the first sentence on the ISO web page[20] states "This document specifies a digital form for representing electronic documents to enable users to exchange and view electronic documents **independent of the environment in which they were created or the environment in which they are viewed or printed**."

Standards bodies such as ETSI[21] and Oasis[22] have written guidelines for interoperability standards, and steps that must be taken for them (as distinguished from non-interoperability

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[17] See DOCX Filing Tips & Best Practices, https://www.uspto.gov/sites/default/files/documents/DOCX_Filing_Tips_and_Best_Practices_October_8_2024.pdf

[18] Supporting Statement, note 5 *supra*, Response to Comment 3.

[19] Supporting Statement, note 5 *supra*, Response to Comment 2.

[20] ISO 32000-2:2020 Document management — Portable document format, https://www.iso.org/standard/75839.html

[21] ETSI, Solve the Challenge of Interoperability! Interoperability Best Practices, https://www.etsi.org/images/files/Events/interoperability_best_practices_handbook.pdf

[22] Oasis Open, Interoperability Guidelines, https://www.oasis-open.org/policies-guidelines/interoperability-guidelines Oasis explains the difference between interoperability

standard), an interoperability standard, that avoids vendor lock-in or ambiguous outcomes, must rely on specific core principles.

- **Closed Feature Set (No Extensions):** The specification must be **normative and bounded**¸ and must not allow vendor-specific extensions or subsetting. Compliance means supporting the entirety of the base standard and nothing else. An "extension" is a feature that exists in one implementation but not in others; therefore files created with the extension cannot be processed by other standard-conforming software. (Major vendors use extensions to lock customers in; extensions are anathema to "interoperability" standard.) "Subsetting" is when an implementation implements and permits less than the entire standard. Subsetting, likewise, means that a file created on one computer cannot necessarily be processed correctly on another.

- **Deterministic Output:** The standard must define explicit and invariant requirements around **input-to-output mappings**. The standard must permit **no** "implementation defined" behaviors (the standard may allow implementation maximum limits, but must guarantee consistent behavior within those limits).

- **Strict Conformance Testing:** A robust, unambiguous suite of test assertions must exist. This validates whether independent implementations conform perfectly to the rules, confirming behavior is identical across the ecosystem.

- **Platform & Vendor Neutrality:** The definitions must remain divorced from specific internal system architectures, programming languages, or operating environments.

ISO 19005-4 **The PDF/A-4 Standard**[23] (and ISO 32000 the base PDF standard)	**ISO/IEC 29500** **The DOCX standard**[24]
PDF is the product of an industry-wide "voluntary conformance standard" process. The PDF Association has over 125 paid members, including Adobe, dozens of competing software vendors, the United States Government Publishing Office, National Archives and Records Administration, and Library of Congress, analogous government offices of India, Canada, the Netherlands, Denmark, Australia, New Zealand, The UK Association for Accessible Formats (UKAAF), Boeing, Jet Propulsion Labs, and DocuSign.[25]	DOCX is a single-vendor standard.[26] The ECMA-376 and ISO committees were stacked by Microsoft (for example, both chairs were Microsoft employees), and the standardization process was fast-tracked by compressing the process into a single 5-day meeting to consider a 7000-page document, that considered only 20% of the amendments proposed by ECMA.[27] Microsoft publicly admitted that one of its representatives had engaged in vote buying.[28]

standardization and non-interoperability standardization, and standards that are "tightly bound to the needs of that one vendor."

[23] PDF/A standard, ISO 19005-4, note 3 *supra*, Introduction, page vi.

[24] ISO/IEC 29500 OOXML, note 2 *supra*.

[25] https://pdfa.org/member/

The first paragraph of the PDF/A-4 standard states that the standard is directed to ensuring that all future users of a PDF/A document "**maintaining their visual appearance as well as their higher-order properties, such as the logical organization of pages, sections, and paragraphs, machine recoverable text stream in natural reading order**."[29] The third paragraph reads "The primary purpose of ISO 19005 is to define a file format based on PDF, known as PDF/A, which provides a mechanism for representing electronic documents in a manner that **preserves their visual appearance over time, independent of the tools and systems used for creating, storing or rendering the files.** "	The DOCX Standard makes no analogous promise. The USPTO has asserted this repeatedly since 2020, but has never identified any document that makes such a promise, let alone provided a cite or other "objective support." The USPTO's assertion appears to be nothing more than hopeful opinion.

[26] The ISO/IEC 29500 and ECMA-376 standard (also known as Office Open XML or OOXML) is widely considered in the industry to be essentially Microsoft's proprietary file specification, that Microsoft shepherded through the standardization process under its heavy influence. Microsoft dominates this standard in several concrete ways. (a) Microsoft submitted the massive 6,000+ page OOXML specification to ECMA International in 2006. The ECMA committee was chaired by two Microsoft employees. The ECMA-376 standard—6000 pages—emerged in only a year from submission to approval. Microsoft then pushed to make ECMA-376 an ISO/IEC 29500 standard, and fast-tracked it in a few months. That proceeding was heavily contested, with critics, competitors, and standards advocates alleging vote buying and manipulation, heated verbal confrontations, refusal to come to consensus, and procedural irregularities. Detractors argued it was too complex and tailored specifically to Microsoft's pre-existing software architecture. Wikipedia, Standardization of Office Open XML, https://en.wikipedia.org/wiki/Standardization_of_Office_Open_XML; Network World, *Office Open XML standardization to drag into next year*, note 28, *infra*; The Document Foundation, Why OOXML is not a standard format for office documents, https://blog.documentfoundation.org/blog/2026/02/06/why-ooxml-is-not-a-standard-format-for-office-documents/

[27] https://blog.documentfoundation.org/blog/2026/02/06/why-ooxml-is-not-a-standard-format-for-office-documents; Jira Kosek, *From the Office Document Format Battlefield*, IEEE IT Professional 10:3:51-55 (May-Jun 2008). Articles explaining the irregularities include *Microsoft Allegedly Bullies and Bribes to Make Office an International Standard*, https://www.wired.com/2007/08/microsoft-allegedly-bullies-and-bribes-to-make-office-an-international-standard (Aug. 31, 2007); *Office Open XML ISO certification process grows even murkier for Microsoft*, https://arstechnica.com/information-technology/2007/07/office-open-xml-iso-certification-process-grows-even-murkier-for-microsoft/ (Jul. 26, 2007); *Complaints about the national bodies process,* https://en.wikipedia.org/wiki/Standardization_of_Office_Open_XML#Complaints_about_the_national_bodies_process. The PTO cannot claim to be ignorant of this history—the PTO was given a copy of this article which explains Microsoft's sordid behavior. 60-day letter of 152 Practitioners

[28] Network World, Office Open XML standardization to drag into next year, https://www.networkworld.com/article/813817/software-office-open-xml-standardization-to-drag-into-next-year.html

[29] See note 3 *supra*.

PDF/A **does not permit extensions**. (PDF 2.0 permits extensions under carefully-controlled circumstances. The whole point of PDF/A is to exclude any features of full PDF that introduce dependencies outside the four corners of the PDF file).	Microsoft has a 118-page document explaining extensions that are added every month or two.[30] If a patent applicant uses one of these features when newly added to Office 365, there is no possible way that the USPTO's DOCX intake software can process it correctly.
PDF/A **does not permit subsetting**, except that an embedded font may be subsetted to only those characters actually used.	ISO/IEC 29500 permits subsetting. The application need not implement operations on all XML elements defined in ISO/IEC 29500."[31]
The PDF/A standard document never uses the word "implementation defined" or any synonym. (The base PDF standard allows "implementation defined" limits for maximum sizes of internal tables, but every *behavior* is specified; no *behavior* is left "implementation defined."	ISO/IEC 29500 has many dozens of "implementation defined" behaviors, some of which were pointed out in one of the comment letters.[32] "Implementation defined" and "interoperable" are mutually exclusive properties for a standard document.
Test suites were developed by the PDF Association and veraPDF consortium.[33] A vendor-neutral test suite is essential so that every implementer of PDF has a way to validate that its software conforms to the standard.	A web page[34] claims that an OOXML validator exists, but then the page admits that the tool doesn't exist, never has, and is only "Tool coming soon." There is no indication that this tool is to be developed in consultation with any standards body. The "What kind of issues are detected" line does not list the issues relevant to reproducibility.
	Microsoft has never committed to observing the standard – Microsoft has a 118-page document describing how Word departs from the standard. https://learn.microsoft.com/en-us/openspecs/office_standards/ms-docx/b839fe1f-e1ca-4fa6-8c26-5954d0abbccd
PDF/A is a "live" standard, updated regularly	The DOCX standards, ECMA-376 and ISO/IEC 29500-1:2016, have not been updated (at least not the relevant parts) since initial adoption in 2016

[30] See note 4 *supra*.

[31] ISO/IEC 29500 OOXML § 2.4 note 2 *supra*.

[32] Seventy-Three Patent Practitioners, Comment letter on Setting and Adjusting Patent Fees During Fiscal Year 2020, https://www.uspto.gov/sites/default/files/documents/Comment_Seventy_Three_Patent_Practitioners_092719.pdf at pages 15-16 (Sep. 27, 2019)

[33] https://pdfa.org/resource/isartor-test-suite and https://verapdf.org/ (specifically https://pdfa.org/resource/verapdf-test-suite and https://verapdf.org/category/software)

[34] OOXML Validator | AnyOnlineTool

The Library of Congress warns that conversion between LibreOffice's ODT and Word's DOCX is neither straightforward nor reliable:[35]

> **Conversion between DOCX and ODT**: Acknowledging the interest in whether conversion between DOCX and ODT (Open Document Format word-processing) files could be reliable, ISO started a work item to explore this issue. *ISO/IEC TR 29166:2011 Information technology -- Document description and processing languages -- Guidelines for translation between ISO/IEC 26300 and ISO/IEC 29500 document formats* is the output of that expert working group. The report documents the challenges of translation between OOXML and ODF formats, including the word-processing formats, based on the standards as documented at the time. This report, available from ITTF, describes features and functionality for the three primary types of office document and characterizes the translatability of features and functions as *high*, *medium*, or *low*. The challenges are significant since the two formats use different underlying models. Although simple documents can be effectively converted, a round-trip to an identical document should never be expected. Display differences will be common after conversion, most of no semantic significance, but many resulting in different pagination or spacing.

5. Specific comments to which commenter requests direct answers, supported by evidence

Following are several specific questions that request answers. Each questions tests facts and assumptions underlying whether the collection of information is necessary for the proper performance of the functions of the Agency, accuracy of the Agency's estimate of burden, validity of the methodology and assumptions used; quality, utility, and clarity of the information to be collected; and whether the agency has acted out of technological misunderstanding that increases burden on those who are to respond.

Please respond fairly. Please do not recharacterize comments—either the comments above or the questions below. Please do not respond with *non sequiturs* that evade the comment. Please familiarize yourself with terms of art such as "interoperability standard" and "open source," so that your responses do not demonstrate the buffoonery of not knowing the meanings of technological terms. Please do not demonstrate willful avoidance of learning what words mean and their relevance. Under 44 U.S.C. § 3506(c)(3) and 5 C.F.R. § 1320.9, the Office is required to "provide a record supporting" each of its claims—please cite evidence for the USPTO's positions, and please do not stand on personal opinions. Please do not contradict statements in the three relevant standards (ISO/IEC 29500 (the DOCX standard), ISO 19005-4 (the PDF/A-4 standard), and ISO/IEC 32000 (the base PDF standard)) without explaining in detail why the USPTO believes that the documents do not mean what they say. Please do not attribute to standards documents promises that they do not state—for example, ISO/IEC 29500 makes no claim whatsoever that DOCX provides a reproducible, uniform, consistent "reliable source of structured text" (in fact, by reserving "implementation defined" behaviors, it promises

[35] Sustainability of Digital Formats: Planning for Library of Congress Collections, DOCX Transitional (Office Open XML), ISO 29500:2008-2016, ECMA-376, Editions 1-5, https://www.loc.gov/preservation/digital/formats/fdd/fdd000397.shtml

the opposite) -- if the USPTO believes otherwise, please identify and cite specific statements in the standard document.

Citations to evidence are essential to honesty and accuracy. The DOCX standard, ISO/IEC 29500, is not at https://www.iso.org/committee/45374/x/catalogue The USPTO has given this cite repeatedly, from the NPRM in 2019 to the Supporting Statement in 2023. That URL is wrong. This repetition of uncorrected error strongly suggests that the USPTO acts with contempt for fact and accuracy, and has never bothered to read the standard before making representations about what it guarantees and what it does not. I obtained copies of the ECMA and ISO/IEC DOCX standards; they are available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202309-0651-002 Since 2019, the USPTO has contradicted the standards over an over, never citing any evidence for its opinions. Please take the steps that honest competent people take to be accurate.

1. In 2023, several commenters noted that "Save As DOCX" out of LibreOffice, Google Docs, Mac Pages, etc. does not result in a DOCX file that mirrors the content of the native output of the word processor—Greek letters, formulas, paragraph formatting, etc. change. The USPTO claims "DOCX format is supported by many popular word processing applications, such as Google Docs, LibreOffice and Pages for Mac."[36] One has nothing to do with the other. Please explain how this is relevant. "Supported" does not mean "consistent output." The issue is reliability of conversion. The Library of Congress, tested reliability of conversion, and concluded that conversion between word-processing formats is not reliable.[37] Kindly explain any basis to disagree with the Library of Congress.

2. In computing a failure rate, the USPTO includes in the denominator "national stage entry applications and provisional applications" which need not be filed in DOCX, in addition to the nonprovisional 111(a) applications.[38] Adding specious counts to a denominator is one classic way that dishonest people cheat with statistics. Kindly explain a valid basis for including "national stage entry applications and provisional applications" in this denominator and how an honest person could have made this error.

3. In the December 2023 Supporting Statement, the USPTO claims "DOCX… provide[s] a reliable source of structured text"[39] The 2023 Supporting Statement claimed "DOCX presents documents, including text and formatting, in a manner that is independent of software, hardware, or operating systems."[40] (a) Kindly identify a statement in ISO/IEC 29500 that corresponds to either claim, with a scope of guarantee that includes DOCX files generated by non-Microsoft word processors. (b) Kindly reconcile these two claims with ISO/IEC 29500's extensive list of "implementation defined" features, particularly those in the comment letters.[41] (c) Kindly reconcile these claims with the ISO/IEC

[36] Supporting Statement, note 5 *supra*, Response to Comment 3.

[37] See note 35 *supra*.

[38] Supporting Statement, note 5 *supra* , Response to Comment 3.

[39] Supporting Statement, note 5 *supra* , Response to Comment 3.

[40] Supporting Statement, note 5 *supra* , Response to Comment 2.

[41] Seventy-Three Letter, note 32 *supra*, at pages 15-17.

29500's support for extensions.[42] (d) Kindly reconcile these two statements with Microsoft's documentation[43] that shows that Microsoft changes the DOCX format several times a year.

4. The USPTO claims "The DOCX format, being open source, is available to users of most every document processing application or software options including Google docs and Apple products."[44] Kindly explain how this is relevant. "Interoperability" and "open source" are completely different concepts; neither has anything to do with the other. The issue is that (a) the DOCX standard does *not* give the necessary guarantees for interoperability, and (b) the DOCX standard *does* say that many dozens of behaviors are implementation defined," that is, they may vary implementation-to-implementation, and the standard permits both extensions and subsetting. Those features guarantee that no two implementations need be consistent. Even the sentence itself is false: ISO standard IEC-29500 is **not** "open source." This sentence suggests ignorance of technological vocabulary and willful ignorance of the technological issue that was the subject of the comment..

5. In 2023, the USPTO claimed "However, the DOCX file is itself a stable carrier for the textual elements of the document."[45] Kindly explain how this is relevant, and not an evasion of the issue. *patent applications are not only "textual elements."* Patent applications include mathematical symbols, tables, mathematical formulae, and text formatting that communicates meaning (the subscript above). The USPTO choice of wording suggest that the USPTO concedes that DOCX does *not* function as a "stable carrier" for complex documents such as patent applications. Kindly explain.

6. In the December 2023 Supporting Statement, the USPTO claims "PDF submissions, even rich text formatted PDF submissions, do not provide the same benefits to internal processes as filing in the DOCX format."[46] Kindly identify statements in either the PDF standard (ISO 32000) or PDF/A standard (ISO 19005-4) that support this claim.

7. In the December 2023 Supporting Statement, the USPTO concedes "The use of fonts such as specialized fonts, custom fonts, particularly uncommon fonts, or internal fonts that have similar labels but use different glyphs from standard font typeface, creates discrepancies during the document validation and conversion processes."[47] From an applicant's point of view, this all just works in PDF. Kindly explain how making this *not* work in DOCX is compatible with the statutory obligation, 44 U.S.C. § 3506(c)(3)(E), to "implement [agency paperwork collections] in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond"

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[42] ISO/IEC 29500 OOXML, note 2 *supra*, at § 9.1.7, §17.14.25, § 17.17.3, § 18.2.7; see discussion of "extensions" at pages 8 and 10,

[43] See note 4 *supra*.

[44] Seventy-Three Letter, note 32 *supra*, at pages 15-17.

[45] Supporting Statement, note 5 *supra* Response to Comment 2.

[46] Supporting Statement, note 5 *supra*, Response to Comment 3.

[47] December 2023 Supporting Statement, note 5 *supra*, Response to Comment 3.

8. The USPTO claims "preliminary validation is performed on DOCX documents at the time of upload. The system immediately detects and supplies the applicant with useful error and warning messages, allowing for adjustments to patent applications earlier in the process. This saves time, reduces potential costs to applicants and the USPTO, and prevents delays in processing"[48] Kindly explain technological reasons that these same benefits cannot be achieved by PDF/A (other than that the USPTO chose to ignore its own "yearlong study" and to implement them for DOCX instead of PDF/A). The USPTO claims that "this is not a feature that is available for PDF submissions."[49] Other than the USPTO choosing to not make it available, kindly explain why it could not be made available for character-based PDF/A as set forth in ISO 19005.

9. The USPTO's December 2023 Supporting Statement claimed that "Some commenters noted that a DOCX file created on one computer may not appear the same when viewed with a different program on a different computer" for several different reasons, and that users had actually observed the discrepancy. The USPTO's response is "The USPTO has not experienced the issue raised by commenters."[50] The USPTO claims that "The USPTO is simply not seeing the unreliability asserted by the commenter."[51] Kindly explain why personal unawareness is a relevant criterion, to rebut actual observations by users. Kindly explain what testing and verification methods the USPTO is using, that would allow it to detect when its rendering of a DOCX file differs from what appeared on the user's screen (especially if that user is using a non-Microsoft word processor). Kindly explain how the USPTO reviews PDF documents that would have been generated on the user's computer to serve as a error detection and correction baseline.. Kindly explain how a rare but catastrophic problem is ameliorated by a claim of personal unawareness.

10. The USPTO claimed that DOCX is suitable because it is a "standard," yet, comment letters note, the USPTO refuses to implement the full standard. A partial implementation cannot claim to be "standard conforming." The comment letters challenged the USPTO's inconsistency. The December 2023 Supporting Statement claims "The comment letters] suggest that it forces non-standard usage of DOCX files and that the USPTO is making its own standard." [52] I am unable to locate any comment that conforms to either half of this paraphrase. To all appearances, the comment was misparaphrased to allow the USPTO to evade direct response. Kindly identify any comment document that made either the "making its own standard" or "forces non-standard usage." (Not permitting full exercise of the standard is a completely different thing than "forces non-standard usage" –perhaps this is another result of the USPTO's naïveté in respect to technological terms and standards.) Kindly identify any basis to reconcile the USPTO's justification for the rule based on DOCX being a "standard" but simultaneously refusing to implement that standard. **The USPTO admits "**equations presented in certain fonts in DOCX filings may not render accurately in the downstream

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[48] December 2023 Supporting Statement, note 5 *supra*, Response to Comment 4.

[49] December 2023 Supporting Statement, note 5 *supra*, Response to Comment 4.

[50] December 2023 Supporting Statement, note 5 *supra*, Response to Comment 7.

[51] December 2023 Supporting Statement, note 5 *supr*a, Response to comment 3.

[52] December 2023 Supporting Statement, note 5 *supra*, Comment 8.

documents generated by the USPTO"[53] even though those equations are within the standard. Kindly explain how disallowing or erroneously rendering legal and standard-conforming equations can be consistent with the USPTO's representations that DOCX is a permissible filing format because it is "standard."

11. Comment letters noted that the USPTO had relied on a "yearlong study", which concluded that PDF is "the right approach," but (a) had not disclosed that "yearlong study" during notice and comment, and (b) had acted 180° opposite the conclusion of the only study cited. The December 2023 Supporting Statement responds as follows:

> The USPTO made the decision to encourage submissions of applicant files via DOCX format in order to leverage the structured text and not rely upon the OCR process of the PDF conversion. This decision was reached based on internal IT considerations and initiatives, external sources, and industry practices, not solely based on any one study.[54]

Kindly identify anywhere in the NPRM or Final Rule that the USPTO relied on "internal IT considerations and initiatives, external sources, and industry practices" other than the "yearlong study." Kindly identify where the USPTO made available to the public, during the 2019 notice-and-comment period, any of the "internal IT considerations and initiatives, external sources, and industry practices" on which the USPTO relied. Kindly identify any law that grants the USPTO an exemption from the requirement that agencies disclose the sources they rely on.[55]

12. In the December 2023 Supporting Statement, the USPTO acknowledges that public comments estimated that 0.5 hours was too low. The public's estimates were accompanied by several pages of explanation. The USPTO responded "the USPTO considered the most recent feedback received and maintains that the estimated time burden of 30 minutes is an adequate amount of time"[56] with no further evidence or explanation. The Paperwork Reduction Act requires agencies to support their estimates with a supporting record, 44 U.S.C. § 3506(c)(3) and 5 C.F.R. § 1320.9, not personal opinion or "maintains." Kindly explain the methodology supporting the estimate of 0.5

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[53] December 2023 Supporting Statement, note 5 *supra*, Comment 8.

[54] December 2023 Supporting Statement, note 5- *supr*a, Comment 11.

[55] PTO's Information Quality Guidelines, § VII(B) ("when asked the USPTO does provide disclosure of the data sources that have been used and the specific quantitative methods and assumptions (if any) that have been employed."); *Chamber of Commerce v. Securities & Exchange Comm'n*, 443 F.3d 890,899, 901–02 (D.C. Cir. 2006) ("[a]mong the information that must be revealed for public evaluation are the 'technical studies and data' upon which the agency relies [in its rulemaking]"—agency rule vacated where agency relied on undisclosed extra-record materials in arriving at its cost estimates); *Engine Mfrs' Ass'n v. EPA*, 20 F.3d 1177, 1181–82 (D.C. Cir. 1994) (R.B. Ginsberg, J.) (APA requires agency to make available "data and studies in intelligible form so that public sees 'accurate picture of reasoning' used by agency to develop proposed rule"); *Solite Corp. v. EPA*, 952 F.2d 473, 484 (D.C. Cir. 1991) ("Integral to the notice requirement is the agency's duty 'to identify and make available technical studies and data that it has employed in reaching the decisions to propose particular rules… An agency commits serious procedural error when it fails to reveal portions of the technical basis for a proposed rule in time to allow for meaningful commentary.'")

[56] December 2023 Supporting Statement, note 5 *supr*a, Response to comment 13.

hours ***to achieve the same reliability as PDF filing***. Explain the source of the USPTO's expertise to estimate what users do, and how they evaluate error. Explain with particularity why the USPTO disagrees with the following estimates:

- David Boundy, objectID=107472802 at pages 4-5; estimates total $200 million/yr.
- Brad Forrest, objectID=135639300 at pages 99-107; estimates total $200 million/yr.
- Carl Oppedahl on behalf of 107 co-signatories, objectID=135640900 at page 9; estimates total $600 million/yr.
- Dr. Cathy Cretsinger, objectID=136718302, at pages 7-8; estimates total $600 million/yr.

13. The public noted that the USPTO's burden estimates were too low because multiple categories of burden required by 44 U.S.C. § 3502(2) and 5 C.F.R. § 1320.3(b) were omitted. The December 2023 Supporting Statement responds that those categories "are outside the scope of this information collection."[57] Kindly identify a definition of "burden" that permits exclusion of the relevant categories of burden for "the scope of this information collection." For a reminder, 5 C.F.R. § 1320.3(b) required the Office to account for the following classes of burden:

    (i) Reviewing instructions;

    (ii) Developing, acquiring, installing, and utilizing technology and systems for the purpose of collecting, **validating**, and verifying information;

    (iii) Developing, acquiring, installing, and utilizing technology and systems for the purpose of processing and maintaining information;

    (iv) Developing, acquiring, installing, and utilizing technology and systems for the purpose of disclosing and providing information;

    (v) **Adjusting the existing ways** to comply with any previously applicable instructions and requirements;

    (vi) Training personnel to be able to respond to a collection of information;

    (vii) Searching data sources;

    (viii) Completing and **reviewing** the collection of information; and

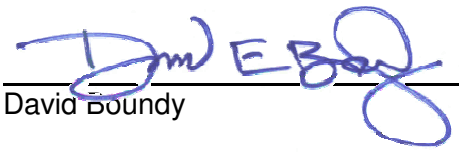
    (ix) Transmitting, or otherwise disclosing the information.

14. The public comments noted that the combination of an auxiliary PDF and DOCX is unnecessarily duplicative. The USPTO responded "The submission of an auxiliary PDF is a voluntary action on the part of the applicant. The USPTO does not require submission of the auxiliary PDF."[58] 44 U.S.C. § 3506(c)(1)(B)(iii) and 5 C.F.R. § 1320.3(c) require the USPTO to consider burden "whether responses … are voluntary… or mandatory." Kindly explain why "voluntary action" is an exemption from any requirement of the Paperwork Reduction Act, and particularly why "voluntary" is an

[57] December 2023 Supporting Statement, note 5 *supra*, Response to comment 3.

[58] December 2023 Supporting Statement, note 5 *supra*, Response to comment 13.

exemption from the Act's bar against "unnecessarily duplicative" collection of information.



David Boundy

June 26, 2026
Date