

JUSTIFICATION FOR NONMATERIAL/NONSUBSTANTIVE CHANGE
Rules for Patent Maintenance Fees
OMB Control Number 0651-0016

Background

Under 35 U.S.C. 41 and 37 §§ CFR 1.20(e)-(h), 1.362, 1.366, 1.377, and 1.378, the United States Patent and Trademark Office (USPTO) charges fees for maintaining in force all patents based on applications filed on or after December 12, 1980, except for plant and design patents. Furthermore, maintenance fees are required for a reissue patent unless the patent being reissued did not require maintenance fees. Payment of these maintenance fees is due at 3-1/2, 7-1/2, and 11-1/2 years after the date the patent was granted. See section 2504 of the Manual of Patent Examining Procedure (MPEP) (9th Edition, Rev. 07.2022, February 2023) for more information.

If the USPTO does not receive payment of the appropriate maintenance fee and any applicable surcharge within a grace period of six months following each of the above due dates (at 4, 8, or 12 years after the date of grant), the patent will expire at that time. After a patent expires, it is no longer enforceable. Payments of maintenance fees that are submitted during the 6-month grace period before patent expiration must include the appropriate surcharge as indicated by 37 CFR § 1.20(h). Submissions of maintenance fee payments and surcharges must include the relevant patent number and the corresponding United States application number in order to identify the correct patent and ensure proper crediting of the fee being paid. See MPEP 2506, 2510, and 2515 for more information.

If the USPTO refuses to accept and record a maintenance fee payment that was submitted prior to the expiration of a patent, the patentee may petition the Director to accept and record the maintenance fee under 37 CFR § 1.377. This petition must be accompanied by the fee indicated in 37 CFR § 1.17(g), which may be refunded if it is determined that the refusal to accept the maintenance fee was due to an error by the USPTO.

If a patent has expired due to nonpayment of a maintenance fee, the patentee may petition the Director to accept a delayed payment of the maintenance fee under 37 CFR § 1.378(b). The Director may accept the payment of a maintenance fee after the expiration of the patent if the petitioner shows to the satisfaction of the Director that the delay in payment was unintentional. Petitions to accept unintentionally delayed payment must also be accompanied by the required maintenance fee and the petition fee as set forth in 37 CFR § 1.17(m). If the Director accepts the maintenance fee payment upon petition, then the patent is reinstated. If the USPTO denies a petition to accept delayed payment of a maintenance fee in an expired patent, the patentee may petition the Director to reconsider that decision under 37 CFR § 1.378(d).

This information collection covers maintenance fee petition information, including the electronic interface and form provided by the USPTO to assist the public with

maintenance fee petitions. To pay a maintenance fee after patent expiration, the maintenance fee payment and the petition fee, as set forth in 37 CFR § 1.17(m), must be filed together with a petition to accept an unintentionally delayed payment of the maintenance fee in an expired patent under 37 CFR § 1.378(b). The USPTO offers two different versions of the form for petitions to accept unintentionally delayed payments of maintenance fees: a web-based ePetition and form PTO/SB/66 (a fillable PDF). The USPTO recommends the use of the web-based ePetition. The USPTO does not offer forms for the petitions to review the refusal to accept the payment of a maintenance fee prior to the expiration of the patent under 37 CFR § 1.377 or the petitions for the reconsideration of decisions on petitions refusing to accept the delayed payment of a maintenance fee in an expired patent under 37 CFR § 1.378(d).

Rulemaking 0651-AD92

In RIN 0651-AD92 (Conditions for Additional Information and Fee in Petitions Filed in Patent Applications and Patents Based on Unintentional Delay) published on June 24, 2026,¹ the United States Patent and Trademark Office (USPTO) is requiring additional information whenever the delay in taking certain actions in patent applications and patents is more than one year, instead of requiring additional information whenever the delay was more than two years. This action is being taken to increase certainty and predictability concerning patent rights, and to encourage the timely filing of grantable petitions to revive applications, accept delayed maintenance fee payments, accept delayed priority or benefit claims, and seek relief from time limits in connection with international design applications. In addition, the USPTO is changing the conditions for when the corresponding petition fee is required.

In support of RIN 0651-AD92, the USPTO is adjusting the estimated annual burden hours and non-hour costs in this information collection. The Rule increases the estimated time for response for Item 1 (Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR §1.378(b))) from 1 hour to 2.75 hours. Additionally, the Rule changes the estimated number of fees paid associated with this item.

Itemized Changes

Table 1: Changes in Hourly Burden

Item No.	Item	Current Annual Hourly Burden	New Annual Hourly Burden	Change in Annual Hourly Burden
1	Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR § 1.378(b))	2,500	6,875	+4,375

Table 2: Changes in Fee Responses

Item No.	Fee Code	Fee Amount	Item	Current Annual Fee Responses	New Annual Fee Responses	Change in Annual Fee Responses
1	1558	\$2,260	Petition to Accept Unintentionally Delayed Payment of	530	141	-389

¹ <https://www.govinfo.gov/content/pkg/FR-2026-06-24/pdf/2026-12717.pdf>

			Maintenance Fee in an Expired Patent (37 CFR § 1.378(b)) - delay less than or equal to two years (undiscounted entity)			
1	2558	\$904	Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR § 1.378(b)) - delay less than or equal to two years (small entity)	1,515	613	-902
1	3558	\$452	Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR § 1.378(b)) - delay less than or equal to two years (micro entity)	455	189	-266
1	1560	\$3,000	Petition for the delayed payment of the fee for maintaining a patent in force, delay greater than two years (undiscounted entity)	25	251	+226
1	2560	\$1,200	Petition for the delayed payment of the fee for maintaining a patent in force, delay greater than two years (small entity)	77	1,090	+1,013
1	3560	\$600	Petition for the delayed payment of the fee for maintaining a patent in force, delay greater than two years (micro entity)	17	335	+318
			Totals	2,619	2,619	+0

Table 3: Changes in Non-hour Cost

Item No.	Fee Code	Fee Amount	Item	Current Cost (a)	New Cost (b)	Change in Non-hour Cost Burden (b) – (a) = (c)
1	1558	\$2,260	Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR § 1.378(b)) - delay less than or equal to two years (undiscounted entity)	\$1,197,800	\$318,660	-\$879,140
1	2558	\$904	Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR § 1.378(b)) - delay less than or equal to two years (small entity)	\$1,369,560	\$554,152	-\$815,408
1	3558	\$452	Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR § 1.378(b)) - delay less than or equal to two years (micro entity)	\$205,660	\$85,428	-\$120,232
1	1560	\$3,000	Petition for the delayed payment of the fee for maintaining a patent in force, delay greater than two years (undiscounted entity)	\$75,000	\$753,000	+\$678,000
1	2560	\$1,200	Petition for the delayed payment of the fee for maintaining a patent in force, delay greater than two years (small entity)	\$92,400	\$1,308,000	+\$1,215,600
1	3560	\$600	Petition for the delayed payment of the fee for maintaining a patent in force, delay greater than two years (micro entity)	\$10,200	\$201,000	+\$190,800
			Totals	\$2,950,620	\$3,220,240	+\$269,620

Summary of Changes

The aforementioned rulemaking results in the increase of 4,375 annual burden hours and \$269,620 in annual non-hourly costs to collection 0651-0016.

Changes in Burden

Burden Type	Currently Approved	Proposed Change	New Estimate
Annual Number of Responses	2,616	0	2,616
Annual Time Burden (Hr)	3,424	+4,375	7,799
Annual Non-Hour Cost Burden (\$)	2,951,260	+269,620	3,220,880

0651-0016's revised burden is as follows:

- 2,616 annual responses (unchanged)
- 7,799 annual hourly burden
- \$3,220,880 in annual non-hourly burden costs