

*Number of Respondents:* 1,669 responses per year.

*Avg. Hours per Response:* It is estimated to take between 30 minutes (0.5 hours) and 4.0 hours for the public to gather, prepare and submit the various petitions in this collection.

*Needs and Uses:* In the interest of national security, patent laws and rules place certain limitations on the disclosure of information contained in patents and patent applications and on the filing of applications for patents in foreign countries. When an invention is determined to be detrimental to national security, the Director of the USPTO must issue a secrecy order and withhold the grant of a patent for such period as the national interest requires. The USPTO collects information to determine whether the patent laws and rules have been complied with, and to grant or revoke licenses to file abroad when appropriate. This collection is required by 35 U.S.C. 181–188 and administered through 37 CFR 5.1–5.33. There are no forms associated with this collection of information.

*Affected Public:* Individuals or households; business or other for-profit; and not-for-profit institutions.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by any of the following:

<bullet≤ *E-mail:*

*Susan.Fawcett@uspto.gov.* Include "0651–0034 copy request" in the subject line of the message.

<bullet≤ *Fax:* 571–273–0112, marked to the attention of Susan K. Fawcett.

<bullet≤ *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before June 4, 2007 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: April 26, 2007.

**Susan K. Fawcett,**

*Records Officer, USPTO, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division.*

[FR Doc. E7–8456 Filed 5–2–07; 8:45 am]

**BILLING CODE 3510–16–P**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

[Docket No. PTO–C–2007–0018]

#### Request for Comments on International Efforts To Harmonize Substantive Requirements of Patent Laws

**AGENCY:** United States Patent and Trademark Office, Department of Commerce.

**ACTION:** Notice of request for public comments.

**SUMMARY:** The United States Patent and Trademark Office (USPTO) is seeking comments to obtain the views of the public on international efforts to harmonize substantive requirements of patent laws, and any potential subsequent changes to United States law and practice. Comments may be offered on any aspect of these efforts.

**DATES:** Comments will be accepted on a continuous basis until June 22, 2007. See discussion of "Text" in the **SUPPLEMENTARY INFORMATION** below.

**ADDRESSES:** Persons wishing to offer written comments by mail should address those comments to the United States Patent and Trademark Office, Office of International Relations, Madison West Building, Tenth Floor, 600 Dulany Street, Alexandria, VA 22313, marked to the attention of Mr. Jon P. Santamauro. Comments may also be submitted to Mr. Santamauro by facsimile transmission to (571) 273–0085 or by electronic mail through the Internet at *plharmonization@uspto.gov*.

The comments will be available for public inspection via the USPTO's Internet Web site (address: *http://www.uspto.gov*). Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jon P. Santamauro by telephone at (571) 272–9300, by fax at (571) 273–0085 or by mail marked to his attention and addressed to United States Patent and Trademark Office, Office of International Relations, 600 Dulany Street, Madison West Building, Tenth Floor, Alexandria, VA 22313.

#### SUPPLEMENTARY INFORMATION:

##### 1. Background

The United States has been involved in efforts to harmonize the substantive patent laws in the different countries of the world for many years. Recent efforts have been made to streamline this

process by limiting the number of topics for consideration in this exercise with the aim of achieving a meaningful near-term agreement. These efforts were initiated in proposals before the Standing Committee on the Law of Patents (SCP), meeting under the auspices of the World Intellectual Property Organization (WIPO), but more recently consensus has not been reached on a particular work plan in that body. Since early 2005, a group of countries, sometimes referred to as the "Alexandria Process" or the "Group B+," has been meeting informally to advance discussions on patent law harmonization in WIPO in the categories of: (1) Definition of prior art, (2) grace period, (3) novelty, and (4) inventive step or non-obviousness. Each of these items relates to applicability of "prior art." These four categories are commonly referred to as the "limited package." These are core elements in patent examination in countries around the world. The "B+" countries include the United States, Canada, Japan, Australia, New Zealand, Norway, the Members of the European Union and the Members of the European Patent Convention. It has been recognized that the items under discussion provide the best chance for achieving a meaningful near-term agreement on patent law harmonization.

Upon conclusion, an agreement on these elements would provide a harmonized system on global applicability of these prior art-related principles. This would allow for more uniform treatment of patent applications and patent grants, improve patent quality and reduce costs for patent owners in obtaining and preserving their rights for inventions in many countries of the world. Meetings of "Group B+" and consultations relating to the WIPO SCP are expected to be convened in 2007. The USPTO is interested in obtaining comprehensive comments regarding these efforts.

##### 2. Issues for Public Comment

The purpose of this notice is to identify and briefly outline important issues that have arisen and are likely to arise during meetings of the "Group B+" and WIPO SCP on patent law harmonization. A brief summary of some of these issues is provided below. Any comments provided with regard to the particular items identified below should be numbered in correspondence with the numbering of these items as shown. Comments on any aspects of these topics are welcome. This would include comments relating to what practices described may constitute "best practices" in an internationally

harmonized system, as well as any other matter relating to the topics identified. The listing of topics is not meant to be exhaustive. Comments offered on other topics relating to efforts on patent law harmonization or to the four "limited-package" categories of defining prior art, grace period, novelty or inventive step, that have not been specifically recited below should be provided under the heading "Other Comments."

(1) *Priority of Invention.* The United States currently adheres to what is usually called the "first-to-invent system" with respect to priority contests between independent inventors who are claiming rights to the same invention. In the context of current U.S. patent law, this entails the establishment of (1) conception of the invention and (2) reduction to practice of the invention by a particular date. Under certain circumstances, the U.S. system permits the party that has reduced the invention to practice later than another to prove that it was the first-to-invent, and thereby entitled to the patent, by establishing a prior date of conception of the invention. The remainder of the world uses what is referred to as a "first-inventor-to-file" (or more widely referred to as "first-to-file") rule in determining the right to a patent. Generally speaking, this practice determines contests between two parties that have independently invented the same invention, and awards the patent to the inventor that files his or her application first in time with the patent authorities in the relevant national or regional patent system. While this topic itself is not one of the four categories of the limited package noted above, this issue would need to be resolved to achieve an agreement on those issues, and has been raised in that context.

(2) *Prior Art Effective Date of Published U.S. Patent Applications.* United States patent law provides that published patent applications and grants are considered prior art with respect to a second patent application provided the application is earlier filed in the United States and is published or granted as required by 35 U.S.C. 102(e). In other words, the prior art effective date of a published application or granted patent is its date of filing in the United States. The Paris Convention provides that applicants may file first in their country of origin and then have a twelve-month period in which to file in foreign markets without harming their ability to obtain protection in those foreign markets. According to U.S. patent law, applications from foreign applicants who rely on the Paris Convention priority date obtain a patent-defeating prior art effect only

from the date of filing in the United States. See *In re Hilmer*, 359 F.2d 859 (CCPA 1966) and 35 U.S.C. 102(e). In other patent systems in the world, applicants (including U.S. origin applicants) obtain prior art effect from the date of their first filing under the Paris Convention, usually 12 months prior to the filing in the country where protection is sought. However, current United States patent law does provide that international application publications under the Patent Cooperation Treaty are available as prior art as of their international filing date, if the international application was filed on or after November 29, 2000, designated the United States, and published in English under the rules of that Treaty. See 35 U.S.C. 102(e).

(3) *Scope of Prior Art Effect of Published Patent Applications.* As noted above, United States patent law provides that published patent applications and grants are considered prior art for the purposes of both novelty and non-obviousness provided the application is earlier filed and is published or granted as required by 35 U.S.C. 102(e). *Hazeltine Research v. Brenner*, 382 U.S. 252, 147 USPQ 429 (1965). This practice helps to prevent grant of overlapping patent rights and to prevent third parties from being threatened by multiple patent infringement lawsuits for substantially the same acts. Other patent systems apply this type of prior art only with respect to novelty, due to concerns of the effect of what may be considered "secret" prior art against a second-in-time inventor who was not aware that any prior art was in existence when its second-in-time patent application was filed. This prior art is considered "secret" in these jurisdictions because this type of prior art has a patent-defeating effect as of its filing date which is prior to its publication. Such a novelty-only system, however, may allow for the granting of multiple patents directed to obvious variations of the same invention.

(4) *Grace Period.* Through operation of the prior art definitions of 35 U.S.C. 102, United States patent law provides a "grace period" of one year prior to the date of application in the United States. Disclosures by the inventor during the "grace period" do not have a patent-defeating effect. During this period, only disclosures "by another" have patent defeating effect. See 35 U.S.C. 102. The "grace period" is considered by many to be necessary to allow inventors to disclose their invention without the penalty of extinguishing any patent rights for that invention. This is generally raised in the context of those

applicants that either have strong incentives to publish early in their fields or, as in the case of independent inventors or small entities, those applicants that are not well versed in the patent system and may inadvertently extinguish their rights through publication. Some other systems, including that in the European Patent Convention (EPC), have an "absolute novelty" requirement such that any disclosures, including those by an inventor himself, made prior to the date a patent application is filed, are considered prior art. Proponents of the "absolute novelty" standard generally view this standard as providing increased legal certainty in that any publication will constitute prior art against a later filed patent application, regardless of the author.

An issue raised in this context is the appropriate length of the "grace period" if introduced globally. Consistent with existing practice, the United States has argued for a twelve-month grace period to ensure optimal utility for applicants, and that the grace period should arise solely by operation of law. Some countries have raised the issue of providing for procedural mechanisms, such as a requirement for the patent applicant to make a declaration of intent to invoke the "grace period," that would require a patent applicant to list any disclosure that the applicant has made in the past twelve months in order to be considered to fall within the grace period. However, others have argued that such a procedural mechanism, which currently does not exist in United States practice, would vitiate the benefits of such a grace period and harm those parties most likely to benefit from such a grace period, e.g., small entities or other applicants less familiar with the patent system.

There are discussions ongoing as well as to the scope of any such grace period. Some have advocated for a broader grace period that would include any information disclosed by or on behalf of an inventor. Others have advocated the view that published patent applications should be excluded from the grace period on the grounds that applying a grace period to patent applications published at eighteen months would unduly extend, by an additional twelve months, the amount of time for applicants to file multiple patent applications on the same invention. Further, it is argued that the equities are not the same in this situation as the application has already knowingly applied for patent protection on the same or related subject matter.

(5) *Geographical Limitations in the Definition of Prior Art.* Recent

discussions at the international level have indicated a willingness on the part of states to eliminate any geographical restrictions that limit the definition of prior art. Currently, United States prior art requirements limit certain types of non-written disclosures to acts within the United States, see 35 U.S.C. 102(a) and 102(b). Some have argued that these restrictions discriminate against countries, in particular certain developing countries where there are traditions of non-written disclosures that should be patent defeating if adequately established. It has also been argued that concerns about the reliability of oral or other non-written disclosures can be more adequately addressed through evidentiary provisions rather than through the substantive patent law.

(6) *“Loss of Right” Provisions.* Current U.S. patent law, 35 U.S.C. 102(b), bars the grant of a patent when the invention was “in public use or on sale” more than one year prior to filing in the United States. The “on sale” provision may bar patenting in this instance, even where the invention has not been disclosed to the public, if it remains “on sale.” Secret commercial use by the inventor is also covered by the bar in order to prevent the preservation of patent rights when, although an invention has remained secret, there has been successful commercial exploitation of the invention by its inventor beyond one year before filing. See, e.g., *Metallizing Engineering Co. v. Kenyon Bearing & Auto Parts*, 153 F.2d 516 (CCPA 1946). These provisions are generally considered to promote early disclosure of inventions through patents and to prevent unjustified extensions of the term of exclusive protection by requiring early filing of patent applications in these circumstances. Most other patent systems do not have such provisions. Advocates of eliminating such requirements argue that such requirements are not objective in nature and therefore add uncertainty and complexity to the patent system.

(7) *“Experimental Use” Exception to Prior Art.* United States patent law provides that a public use or sale by the inventor may be exempt from the prior art if that use or sale was experimental. The courts have considered a use or sale to be experimental if “it represents a *bona fide* effort to perfect the invention or to ascertain whether it will answer its intended purpose. \* \* \* If any commercial exploitation does occur, it must be merely incidental to the primary purpose of the experimentation to perfect the invention.” *LaBounty Mfg. v. United States Int’l Trade Comm’n*, 958 F.2d 1066, 1071, 22 USPQ2d 1025,

1028 (Fed. Cir. 1992) (quoting *Pennwalt Corp. v. Akzona Inc.*, 740 F.2d 1573, 1581, 222 USPQ 833, 838 (Fed. Cir. 1984)). Contrary to the grace period, this exemption from the prior art is not time limited but is considered on a case-by-case basis. Most other systems do not contain such a limitation on prior art. If prior public uses are made, these items constitute prior art, subject to a time-limited grace period in some jurisdictions, regardless of whether the uses are experimental in nature, unless the use is not sufficiently informing to the public.

(8) *Prior User Rights.* While the issue is also not one of those expressly included in the four limited-package categories, this matter has been raised by numerous delegations in the context of patent law harmonization discussions. The United States currently has a defense to infringement with respect to a person, acting in good faith, who had actually reduced the subject matter of an invention to practice at least one year before the effective filing date of a patent application for that invention by another. See 35 U.S.C. 273. This defense is limited in many respects, most notably that it can only be asserted if the invention for which the defense is asserted is a method, defined as a method of doing or conducting business, and further that it may not be asserted if the subject matter on which the defense is asserted is derived from the patentee or persons in privity with the patentee. These types of infringement defenses are generally referred to as “prior user rights.” Other countries have varying practices, but more generally apply such defense to both products and processes and to persons that, in good faith, either use the invention or make effective and serious preparations for such use prior to the effective filing date for the patent application. Further, there is a split between jurisdictions that provide prior user rights. Some apply these rights more broadly to those parties that have derived their use from information from the patentee, including publications by the patentee or inventor prior to the filing date of the later application. Other jurisdictions take a narrower approach that limits prior user rights to those persons who, in good faith, independently developed the later patented product or process. Comments on any aspects of prior user rights, including whether this element should be included with the current talks on prior-art related matters, are welcome.

(9) *Assignee Filing.* United States patent law now requires that a patent application be made, or authorized to be made, by the inventor or inventors.

However, some systems allow for direct filing of patent applications by assignees. These systems generally require that the inventor be named in the application and the entitlement to the patent must derive from the inventor or his successor in title, such as an assignee.

(10) *Eighteen-Month Publication of Patent Applications.* Most countries publish all patent applications at eighteen months after the application’s filing date (or priority date) and prior to grant of the patent. This is sometimes referred to as “pre-grant publication.” This publication requirement is considered by many to be an important transparency mechanism for the patent system and to prevent the occurrence of so-called “submarine” patents that may be pending in the patent office for an extended period of time and then are granted, potentially affecting good faith actors in the relevant field. It should be noted that if the patent application is withdrawn or abandoned by an applicant prior to the eighteen-month date in these jurisdictions, the application is not published. The United States currently provides eighteen-month publication for the large majority of patent applications filed in the United States. However, U.S. patent applications may not be published if an applicant requests at the time of filing of an application that the application not be published and the request certifies that the invention disclosed in the application has not and will not be the subject of a patent application in another country or under a multilateral international agreement that requires eighteen-month publication. See 35 U.S.C. 122(b)(2)(B). Most other systems do not have this type of “opt-out” option. Advocates of eliminating this type of “opt-out” procedure generally consider this type of provision to undermine the transparency and legal certainty provided by publication.

### 3. Further Reference

Comments on any issues regarding the topics listed above, other matters relating to the four “limited-package” categories of (1) definition or prior art, (2) grace period, (3) novelty, and (4) non-obviousness, or any other aspects relating to substantive patent law harmonization are welcome. To facilitate final preparations for the future meetings, comments will be accepted until June 22, 2007. Interested members of the public are also reminded that USPTO previously requested public comments on a wider range of issues relating to patent law harmonization in March 2001. The responses to that request for comments

are available on the Internet Web site of the USPTO at <http://www.uspto.gov/web/offices/dcom/olia/harmonization/>.

Dated: April 26, 2007.

**Jon W. Dudas,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. E7-8416 Filed 5-2-07; 8:45 am]

**BILLING CODE 3510-16-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[No. DOD-2007-OS-0037]

#### Proposed Collection; Comment Request

**AGENCY:** Defense Finance and Accounting Service, DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Finance and Accounting Service (DFAS) announces the proposed extension of a public information collection and seeks public comments on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by July 2, 2007.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

<bullet> *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

<bullet> *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301-1160.

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are

received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instrument, please write to the Defense Finance and Accounting Service—Denver, DFAS—JES/DE, ATTN: Sue Debevec, 6760 East Irvington Place, Denver, CO 80279-3000, or call Sue Debevec at 303-676-5050.

*Title, Associated Form, and OMB Number:* Request for Information Regarding Deceased Debtor; DD Form 2840; OMB Number 0730-0015.

*Needs and Uses:* This form is used to obtain information on deceased debtors from probate courts. Probate courts review their records to see if an estate was established. They provide the name and address of the executor or lawyer handling the estate. From the information obtained, DFAS submits a claim against the estate for the amount due the United States.

*Affected Public:* Clerks of Probate Courts.

*Annual Burden Hours:* 167 hours.

*Number of Respondents:* 2,000.

*Responses per Respondent:* 1.

*Average Burden Per Response:* 5 minutes.

*Frequency:* On Occasion.

#### SUPPLEMENTARY INFORMATION:

##### Summary of Information Collection

DFAS maintains updated debt accounts and initiates debt collection action for separated military members, out-of-service civilian employees, and other individuals not on an active federal government payroll system. When notice is received that an individual is deceased, an effort is made to ascertain whether the decedent left an estate by contacting clerks of probate courts. If it's determined that an estate was established, attempts are made to collect the debt from the estate. If no estate appears to have been established, the debt is written off as uncollectible.

Dated: April 23, 2007.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 07-2141 Filed 5-2-07; 8:45 am]

**BILLING CODE 5001-06-M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[No. DoD-2007-HA-0023]

#### Proposed Collection, Comment Request

**AGENCY:** Office of the Assistant Secretary of Defense for Health Affairs, DoD.

**ACTION:** Notice.

In accordance with Section 3506(c) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed extension of collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Considerations will be given to all comments received on or before July 2, 2007.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

<bullet> *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

<bullet> *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301-1160.

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received, without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection, please write to the TRICARE Management Activity—Aurora, Appeals, Hearings and Claims Collection Division, 16401 E. Centretch Pkwy, Attn: Donald F. Wagner, Aurora, CO 80011-9066, or