

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Post Allowance and Refiling

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 12, 2010.

ADDRESSES: You may submit comments by any of the following methods:

- *E-mail:* Susan.Fawcett@uspto.gov. Include "0651-0033 comment" in the subject line of the message.
- *Fax:* 571-273-0112, marked to the attention of Susan K. Fawcett.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.
- *Federal Rulemaking Portal:* <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Raul Tamayo, Legal Advisor, Office of Patent Legal Administration, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450; by telephone at 571-272-7728; or by e-mail to Raul.Tamayo@uspto.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The United States Patent and Trademark Office (USPTO) is required by 35 U.S.C. 131 and 151 to examine applications and, when appropriate,

allow applications and issue them as patents. When an application for a patent is allowed by the USPTO, the USPTO issues a notice of allowance and the applicant must pay the specified issue fee (including the publication fee, if applicable) within three months to avoid abandonment of the application. If the appropriate fees are paid within the proper time period, the USPTO can then issue the patent. If the fees are not paid within the designated time period, the application is abandoned and the applicant may petition the Director to accept a delayed payment with a satisfactory showing that the delay was unavoidable or unintentional. The Petition for Revival of an Application for Patent Abandoned Unavoidably (Form PTO/SB/61) and the Petition for Revival of an Application for Patent Abandoned Unintentionally (Form PTO/SB/64) are approved under information collection 0651-0031. The rules outlining the procedures for payment of the issue fee and issuance of a patent are found at 37 CFR 1.18 and 1.311-1.317.

Chapter 25 of Title 35 U.S.C. provides that there are several actions that the applicant may take after issuance of a patent, including requesting the correction of errors in a patent. For original patents that are deemed wholly or partly inoperative, applicants may file a reissue application, which entails several formal requirements including an oath or declaration stating that the errors in the patent were not the result of any deceptive intention on the part of the applicant. The rules outlining these procedures are found at 37 CFR 1.171-1.178 and 1.322-1.325.

The public uses this information collection to pay fees for issued patents, to request corrections of errors in issued patents, and to submit applications for reissue patents. This collection previously included information requirements related to patent reexaminations. These items are being

removed from this collection and have been submitted as a separate new collection, 0651-00XX Patent Reexaminations, which is currently under review by OMB.

II. Method of Collection

By mail, facsimile, hand delivery, or electronically to the USPTO. Electronic submissions are made through EFS-Web, the USPTO's online filing system for patent applications and related documents.

III. Data

- OMB Number:* 0651-0033.
- Form Number(s):* PTO/SB/44/50/51/51S/52/53/56 and PTOL-85B.
- Type of Review:* Revision of a currently approved collection.
- Affected Public:* Individuals or households; businesses or other for-profits; and not-for-profit institutions.
- Estimated Number of Respondents:* 217,184 responses per year.
- Estimated Time per Response:* The USPTO estimates that it will take the public from 1.8 minutes (0.03 hours) to 2 hours to gather the necessary information, prepare the appropriate form or other document, and submit the information to the USPTO.
- Estimated Total Annual Respondent Burden Hours:* 65,832 hours per year.
- Estimated Total Annual Respondent Cost Burden:* \$13,053,750 per year. The USPTO expects that the information in this collection will be prepared by attorneys, except for the Issue Fee Transmittal, which will be prepared by paraprofessionals. Using the professional rate of \$325 per hour for attorneys in private firms, the USPTO estimates that the respondent cost burden for attorneys submitting the information in this collection will be \$9,346,350 per year. Using the paraprofessional rate of \$100 per hour, the USPTO expects that the respondent cost burden for submitting the Issue Fee Transmittal will be \$3,707,400 per year.

| Item | Estimated time for response | Estimated annual responses | Estimated annual burden hours |
|--|-----------------------------|----------------------------|-------------------------------|
| Certificate of Correction (PTO/SB/44) | 1 hour | 26,000 | 26,000 |
| Reissue Documentation | 2 hours | 850 | 1,700 |
| Reissue Patent Application Transmittal (PTO/SB/50) | 12 minutes | 850 | 170 |
| Reissue Application Declaration by the Inventor or the Assignee (PTO/SB/51/52). | 30 minutes | 1,135 | 568 |
| Supplemental Declaration for Reissue Patent Application to Correct "Errors" Statement (37 CFR 1.175) (PTO/SB/51S). | 1.8 minutes | 900 | 27 |
| Reissue Application: Consent of Assignee; Statement of Non-assignment (PTO/SB/53). | 6 minutes | 1,230 | 123 |
| Reissue Application Fee Transmittal Form (PTO/SB/56) | 12 minutes | 850 | 170 |
| Issue Fee Transmittal (PTOL-85B) | 12 minutes | 12,975 | 2,595 |
| Issue Fee Transmittal (EFS-Web) (PTOL-85B) | 12 minutes | 172,394 | 34,479 |

| Item | Estimated time for response | Estimated annual responses | Estimated annual burden hours |
|--------------|-----------------------------|----------------------------|-------------------------------|
| Totals | | 217,184 | 65,832 |

Estimated Total Annual Non-hour Respondent Cost Burden: \$284,329,886 per year. There are no capital start-up or maintenance costs associated with this information collection. However, this collection does have annual (non-hour) costs in the form of fees, postage costs, and recordkeeping costs.

The total estimated fees for this collection are calculated in the accompanying table. The Reissue Application Fee Transmittal Form

(PTO/SB/56) includes the fees for the reissue application under 37 CFR 1.16, including the basic filing fee, search fee, and examination fee. These fees cover all parts of the application, including reissue documentation, reissue application transmittal, reissue application declarations, and consent of assignee or statement of non-assignment. There is no fee for the supplemental declaration for a reissue patent application to correct an "errors"

statement. Additionally, there are several different issue fees under 37 CFR 1.18 depending on the type of patent being issued, whether a publication fee is required, and whether the inventor is entitled to the discounted small entity fee. The USPTO estimates that the total fees associated with this collection will be \$284,296,310 per year.

| Item | Estimated annual responses | Fee amount | Estimated annual fees |
|---|----------------------------|------------|-----------------------|
| Certificate of Correction (PTO/SB/44) | 26,000 | \$100.00 | \$2,600,000.00 |
| Reissue Documentation | 850 | 0.00 | 0.00 |
| Reissue Patent Application Transmittal (PTO/SB/50) | 850 | 0.00 | 0.00 |
| Reissue Application Declaration by the Inventor or the Assignee (PTO/SB/51/52) | 1,135 | 0.00 | 0.00 |
| Supplemental Declaration for Reissue Patent Application to Correct "Errors" Statement (37 CFR 1.175) (PTO/SB/51S) | 900 | 0.00 | 0.00 |
| Reissue Application: Consent of Assignee; Statement of Non-assignment (PTO/SB/53) | 1,230 | 0.00 | 0.00 |
| Reissue Application Fee Transmittal Form (PTO/SB/56) | 510 | 1,520.00 | 775,200.00 |
| Reissue Application Fee Transmittal Form (small entity) (PTO/SB/56) | 340 | 760.00 | 258,400.00 |
| Issue Fee (utility patent, no publication fee) (PTOL-85B) | 11,162 | 1,510.00 | 16,854,620.00 |
| Issue Fee (utility patent, no publication fee, small entity) (PTOL-85B) | 2,712 | 755.00 | 2,047,560.00 |
| Issue Fee (utility patent, with publication fee) (PTOL-85B) | 118,518 | 1,810.00 | 214,517,580.00 |
| Issue Fee (utility patent, with publication fee, small entity) (PTOL-85B) | 28,802 | 1,055.00 | 30,386,110.00 |
| Issue Fee (design patent, no publication fee) (PTOL-85B) | 13,218 | 860.00 | 11,367,480.00 |
| Issue Fee (design patent, no publication fee, small entity) (PTOL-85B) | 9,976 | 430.00 | 4,289,680.00 |
| Issue Fee (plant patent, no publication fee) (PTOL-85B) | 50 | 1,190.00 | 59,500.00 |
| Issue Fee (plant patent, no publication fee, small entity) (PTOL-85B) | 34 | 595.00 | 20,230.00 |
| Issue Fee (plant patent, with publication fee) (PTOL-85B) | 533 | 1,490.00 | 794,170.00 |
| Issue Fee (plant patent, with publication fee, small entity) (PTOL-85B) | 364 | 895.00 | 325,780.00 |
| Totals | 217,184 | | 284,296,310.00 |

Customers may incur postage costs when submitting the information in this collection to the USPTO by mail. The USPTO estimates that the average first-class postage cost for a mailed submission will be 88 cents and that approximately 15,200 submissions will be mailed to the USPTO per year. The total estimated postage cost for this collection is \$13,376 per year.

When submitting the information in this collection to the USPTO electronically, the customer is strongly urged to retain a copy of the acknowledgment receipt as evidence that the submission was received by the USPTO on the date noted. The USPTO estimates that it will take 5 seconds (0.001 hours) to print and retain a copy of the acknowledgment receipt and that approximately 201,984 responses per year will be submitted electronically, for a total of approximately 202 hours per year for printing this receipt. Using the

paraprofessional rate of \$100 per hour, the USPTO estimates that the recordkeeping cost associated with this collection will be \$20,200 per year.

The total non-hour respondent cost burden for this collection in the form of fees, postage costs, and recordkeeping costs is \$284,329,886 per year.

IV. Request for Comments

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 (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, e.g., the use of

automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 2, 2010.

Susan K. Fawcett,
Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2010-2760 Filed 2-8-10; 8:45 am]

BILLING CODE 3510-16-P