

Officer, United States 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 April 1, 2011 to Nicholas A. Fraser, OMB Desk Officer, via e-mail to [Nicholas\\_A.Fraser@omb.eop.gov](mailto:Nicholas_A.Fraser@omb.eop.gov), or by fax to 202-395-5167, marked to the attention of Nicholas A. Fraser.

Dated: February, 24, 2011.

**Susan K. Fawcett,**

*Records Officer, USPTO, Office of the Chief Information Officer.*

[FR Doc. 2011-4559 Filed 3-1-11; 8:45 am]

**BILLING CODE 3510-16-P**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### Proposed Information Collection Requirements Under OMB Review; Certain Patent Petitions Requiring a Fee

**ACTION:** Notice; 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 revision of a currently approved 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 May 2, 2011.

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

- *E-mail:*

[InformationCollection@uspto.gov](mailto:InformationCollection@uspto.gov).

Include "0651-0059 Patent Petitions Requiring a Fee under 37 CFR 1.17(f)-(h) comment" in the subject line of the message.

- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information should be directed to the attention of Raul Tamayo, Legal Advisor, Office of Patent Legal Administration, U.S. Patent and Trademark Office (USPTO), P.O. Box 1450, Alexandria, VA 22313-1450; by telephone 571-272-7728; or by e-

mail at [raul.tamayo@uspto.gov](mailto:raul.tamayo@uspto.gov) with "Paperwork" in the subject line.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The United States Patent and Trademark Office (USPTO) is required by 35 U.S.C. 131 *et seq.* to examine an application for patent and, when appropriate, issue a patent. Many actions taken by the USPTO during its examination of an application for patent or for reissue of a patent, or during its reexamination of a patent, are subject to review by an appeal to the Board of Patent Appeals and Interferences. For other USPTO actions, review is in the form of administrative review obtained via submission of a petition to the USPTO. USPTO petitions practice also provides an opportunity for a patent applicant or owner to supply additional information that may be required in order for the USPTO to further process an application or patent.

Currently, this collection covers certain petitions which, when submitted to the USPTO by a patent applicant or owner, are required to be accompanied by the fee set forth in 37 CFR 1.17(f). The USPTO has determined that it would be beneficial to group other petitions which require a fee under 37 CFR 1.17 together with the petitions currently in this collection. Specifically, the USPTO proposes to transfer out of 0651-0031 and into this collection petitions which are required to be accompanied by the fee set forth in either 37 CFR 1.17 (g) or (h), including, for example, petitions for requests for documents in a form other than that provided by 37 CFR 1.19, petitions to make special under the accelerated examination program, petitions for express abandonment to avoid publication under 37 CFR 1.138(c), and petitions for extension of time under 37 CFR 1.136(b). For a complete listing of the items covered by this collection, please see the table in Section III of this notice.

The petitions in this collection can be submitted electronically through EFS-Web, the USPTO's web-based electronic filing system, as well as on paper. The USPTO is taking this opportunity to account for the electronic submissions in this collection.

Currently this collection has one form. There are forms associated with the petitions for extension of time under 37 CFR 1.136(b) (PTO/SB/23), petitions to make special under the accelerated examination program (PTO/SB/28), petitions for express abandonment to avoid publication under 37 CFR 1.138(c) (PTO/SB/24A), and petitions to withdraw an application from issue

after payment of the issue fee under 37 CFR 1.313(c) (PTO/SB/140). Therefore, after approval, this collection will have five forms. Please note that there are some petitions to withdraw which cannot be submitted using PTO/SB/140. None of the other petitions in this collection has a form associated with it. The filing fee for petitions with no associated form may be remitted to the USPTO using PTO/SB/17p, which is titled "Petition Fee Under 37 CFR 1.17(f), (g), and (h) Transmittal."

**II. Method of Collection**

By mail, facsimile, or hand delivery to the USPTO when the applicant files the various petitions. These papers can also be filed as attachments through EFS-Web. The petitions to make special under the accelerated examination program can only be filed through EFS-Web.

**III. Data**

*OMB Number:* 0651-0059.

*Form Number(s):* PTO/SB/17P, PTO/SB/23, PTO/SB/24a, PTO/SB/28 (EFS-Web only), and PTO/SB/140.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Business or other for profit; non-profit institutions.

*Estimated Number of Respondents:* 39,015 responses per year. Of this total, the USPTO expects that 35,154 responses will be submitted through EFS-Web.

*Estimated Time per Response:* The USPTO estimates that it will take approximately 5 minutes (0.08 hours) to 12 hours to complete the items in this collection, depending on the petition. This includes time to gather the necessary information, create the documents, and submit the completed request to the USPTO. The USPTO calculates that, on balance, it takes the same amount of time to gather the necessary information, prepare the petitions and the fee transmittal form, and submit them to the USPTO, whether the applicant submits the petition in paper form or electronically.

*Estimated Total Annual Respondent Burden Hours:* 41,907 hours.

*Estimated Total Annual Respondent Cost Burden:* \$13,616,730. The USPTO expects that attorneys will complete all of the items in this collection, with the exception of the petitions for requests for documents in a form other than that provided by 37 CFR 1.19 and petitions for express abandonment to avoid publication under 37 CFR 1.138(c). The USPTO expects that these petitions will be completed by para-professionals. Using the professional hourly rate of \$325 for attorneys in private firms, and

an hourly rate of \$122 for the para-professionals, the USPTO estimates

\$13,616,730 per year for salary costs associated with respondents.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Petitions (corresponding to the fee) under 37 CFR 1.17(f) include: Petition to Accord a Filing Date under 1.57(a); Petition to Accord a Filing Date under 1.53(e); Petition for Decision on a Question Not Specifically Provided For; Petition to Suspend the Rules.	4 hours .....	400	1,600
EFS-Web Petitions (corresponding to the fee) under 37 CFR 1.17(f) .....	4 hours .....	3,200	12,800
Petitions (corresponding to the fee) under 37 CFR 1.17(g): Petition to Access an Assignment Record; Petition for Access to an Application; Petition for Expungement and Return of Information; Petition to Suspend Action in an Application.	2 hours .....	400	800
EFS-Web Petitions (corresponding to the fee) under 37 CFR 1.17(g) .....	2 hours .....	3,500	7,000
Petitions (corresponding to the fee) under 37 CFR 1.17(h): Petition for Accepting Color Drawings or Photographs; Petition for Entry of a Model or Exhibit; Petition to Withdraw an Application from Issue PTO/SB/140; Petition to Defer Issuance of a Patent.	1 hour .....	1,100	1,100
EFS-Web Petitions (corresponding to the fee) under 37 CFR 1.17(h) .....	1 hour .....	10,300	10,300
Petitions for Requests for Documents in a Form Other than that Provided by 37 CFR 1.19.	1 hour .....	5	5
EFS-Web Petitions for Requests for Documents in a Form Other than that Provided by 37 CFR 1.19.	1 hour .....	50	50
Petitions to Make Special Under Accelerated Examination Program PTO/SB/28 (EFS-Web Only).	12 hours .....	550	6,600
Petitions for Express Abandonment to Avoid Publication Under 37 CFR 1.138(c) PTO/SB/24a.	12 minutes .....	50	10
EFS-Web Petitions for Express Abandonment to Avoid Publication Under 37 CFR 1.138(c).	12 minutes .....	500	100
Petition for Extension of Time Under 37 CFR 1.136(b) PTO/SB/23 .....	30 minutes .....	6	3
EFS-Web Petition for Extension of Time Under 37 CFR 1.136(b) .....	30 minutes .....	54	27
Petition Fee under 37 CFR 1.17(f), (g), and (h) Transmittal PTO/SB/17P	5 minutes .....	1,900	152
EFS-Web Petition Fee under 37 CFR 1.17(f), (g), and (h) Transmittal .....	5 minutes .....	17,000	1,360
<b>TOTALS</b> .....	.....	<b>39,015</b>	<b>41,907</b>

**Estimated Total Annual Non-Hour Respondent Cost Burden: \$3,875,424.**

There are no capital start-up, operation, or maintenance costs associated with this information collection. There are, however, postage costs and filing fees.

The public may submit the petitions in this collection to the USPTO by mail through the United States Postal Service. All correspondence may include a certificate of mailing for each

piece of correspondence enclosed, stating the date of deposit or transmission to the USPTO in order to receive credit for timely filing. The USPTO has estimated that the vast majority of these submissions will weigh no more than 13 oz. Therefore, the USPTO is conservatively estimating that these submissions will be mailed in large mailing envelopes by first-class postage at a rate of \$2.92. Postage for the certificates of mailing themselves are

not calculated into this estimate as they are included with the individual pieces of correspondence that are being deposited with the United States Postal Service. The USPTO estimates that 1,961 petitions and 1,900 fee transmittal forms will be mailed to the USPTO per year, for a total postage cost of \$11,274.

This collection has a minimum of \$3,864,150 in associated filing fees, as shown in the accompanying table:

Item	Responses (a)	Filing Fee (\$) (b)	Total non-hour cost burden (a x b) (c)
Petitions (corresponding to the fee) under 37 CFR 1.17(f) include: Petition to Accord a Filing Date under 1.57(a); Petition to Accord a Filing Date under 1.53(e); Petition for Decision on a Question Not Specifically Provided For .....	400	\$400.00	\$160,000.00
EFS-Web Petitions (corresponding to the fee) under 37 CFR 1.17(f) .....	3,200	400.00	1,280,000.00
Petitions (corresponding to the fee) under 37 CFR 1.17(g): Petition to Access an Assignment Record; Petition for Access to an Application; Petition for Expungement and Return of Information; Petition to Suspend Action in an Application .....	400	200.00	80,000.00
EFS-Web Petitions (corresponding to the fee) under 37 CFR 1.17(g) .....	3,500	200.00	700,000.00
Petitions (corresponding to the fee) under 37 CFR 1.17(h): Petition for Accepting Color Drawings or Photographs; Petition for Entry of a Model or Exhibit; Petition to Withdraw an Application from Issue PTO/SB/140; Petition to Defer Issuance of a Patent .....	1,100	130.00	143,000.00
EFS-Web Petitions (corresponding to the fee) under 37 CFR 1.17(h) .....	10,300	130.00	1,339,000.00
Petitions for Requests for Documents in a Form Other than that Provided by 37 CFR 1.19 .....	5	130.00	650.00

Item	Responses (a)	Filing Fee (\$) (b)	Total non-hour cost burden (a × b) (c)
EFS-Web Petitions for Requests for Documents in a Form Other than that Provided by 37 CFR 1.19 .....	50	130.00	6,500.00
Petitions to Make Special Under Accelerated Examination Program (EFS-Web only) PTO/SB/28 (EFS-Web only) .....	550	130.00	71,500.00
Petitions for Express Abandonment to Avoid Publication Under 37 CFR 1.138(c) PTO/SB/24a .....	50	130.00	6,500.00
EFS-Web Petitions for Express Abandonment to Avoid Publication Under 37 CFR 1.138(c) .....	500	130.00	65,000.00
Petition for Extension of Time Under 37 CFR 1.136(b) PTO/SB/23 .....	6	200.00	1,200.00
EFS-Web Petition for Extension of Time Under 37 CFR 1.136(b) .....	54	200.00	10,800.00
Petition Fee under 37 CFR 1.17(f), (g), and (h) Transmittal PTO/SB/17 .....	1,900	None	0.00
EFS-Web Petition Fee under 37 CFR 1.17(f), (g), and (h) Transmittal .....	17,000	None	0.00
<b>TOTALS</b> .....	<b>39,015</b>	.....	<b>3,864,150.00</b>

The USPTO estimates that the total non-hour respondent cost burden for this collection in the form of postage costs and filing fees amounts to \$3,875,424.

**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 will also become a matter of public record.

Dated: February 24, 2011.

**Susan K. Fawcett,**

*Records Officer, USPTO, Office of the Chief Information Officer.*

[FR Doc. 2011-4456 Filed 3-1-11; 8:45 am]

**BILLING CODE 3510-16-P**

**DEPARTMENT OF COMMERCE**

**United States Patent and Trademark Office**

[Docket No. PTO-T-2010-0090]

**Coding of Design Marks in Registrations**

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

**ACTION:** Notice.

**SUMMARY:** The United States Patent and Trademark Office (“USPTO”) is discontinuing the practice of coding newly registered trademarks that include a design element with design mark codes based on the old paper search designations. The USPTO will continue to code all pending applications that contain a design element using a numerical design code system modeled after the International Classification of the Figurative Elements of Marks (“USPTO Design Classification”).

**DATES:** Effective immediately.

**FOR FURTHER INFORMATION CONTACT:** Cynthia C. Lynch, Office of the Deputy Commissioner for Trademark Examination Policy, by telephone at (571) 272-8742.

**SUPPLEMENTARY INFORMATION:**

**Background**

Pursuant to 35 U.S.C. 41(i)(1)–(2), the USPTO maintains a publicly available searchable collection of all United States trademark registrations in electronic form.

On December 28, 2010, the USPTO published a notice and request for comments at 75 FR 81587, proposing to discontinue a secondary system of coding designs contained in registered marks. The USPTO received only one comment, from an organization supporting the proposed discontinuation and encouraging the USPTO to use the cost savings to develop and support electronic initiatives. This comment is posted on the Office's Web site at [http://www.uspto.gov/trademarks/law/FR\\_Notices\\_2010.jsp](http://www.uspto.gov/trademarks/law/FR_Notices_2010.jsp) and is addressed below.

The proposed discontinuation of the secondary system, the Trademark Search Facility Classification Code Index (“TC Index”), stems from its inferiority to the primary system of

design coding, which is much more specific, precise and robust; the infrequent use of the TC Index codes in searches by the public; and its costliness to maintain, especially in proportion to the low usage of the system. The assignment of TC Index codes to active U.S. trademark registrations in the searchable electronic database costs approximately \$531,000 per fiscal year for staffing, systems maintenance, and support costs.

**Changes: USPTO Discontinuing TC Index Coding**

In view of the lack of any public comments opposing the discontinuation and the public comment supporting it, the USPTO is discontinuing the practice of design coding newly registered trademarks with TC Index codes. Terminating the dual design-coding system will result in cost savings and will free the USPTO staff to perform more valuable services for the public.

All existing registrations coded with paper search designations will remain available in the Trademark Electronic Search System (“TESS”) and on microfilm. The USPTO has updated TESS Help to reflect that searching by the TC Index code will only retrieve registrations coded from August 28, 2007, through January 31, 2011. The USPTO strongly advises all users to rely solely on the primary system, Design Search Code (“DC”) field, in TESS when performing searches for pending applications and active registrations for marks that include a design element. The USPTO will continue to code all pending applications that contain a design element with the USPTO Design Classification shown in the DC field. Examining attorneys will continue to rely solely on the USPTO Design Classification for examining and approving applications for marks with design codes for Federal registration.