

(Authority: E.O. 13921)

Dated: October 19, 2020.

Danielle Blacklock,

Director, Office of Aquaculture, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comments Request; Substantive Submissions Made During Prosecution of the Trademark Application

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

ACTION: Notice of information collection; request for comment.

SUMMARY: The United States Patent and Trademark Office (USPTO), in accordance with the Paperwork Reduction Act of 1995, invites comments on the extension and revision of an existing information collection: 0651-0054 (Substantive Submissions Made During Prosecution of the Trademark Application). The purpose of this notice is to allow 60 days for public comment preceding submission of the information collection to OMB.

DATES: To ensure consideration, comments regarding this information collection must be received on or before December 22, 2020.

ADDRESSES: Interested persons are invited to submit written comments by any of the following methods. Do not submit Confidential Business Information or otherwise sensitive or protected information.

- *Email:* InformationCollection@uspto.gov. Include “0651-0054 comment” in the subject line of the message.

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

- *Mail:* Kimberly Hardy, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information should be directed to Catherine Cain,

Attorney Advisor, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450; by telephone at 571-272-8946; or by email to catherine.cain@uspto.gov with “0651-0054 comment” in the subject line. Additional information about this information collection is also available at <http://www.reginfo.gov> under “Information Collection Review.”

SUPPLEMENTARY INFORMATION:

I. Abstract

The United States Patent and Trademark Office (USPTO) administers the Trademark Act, 15 U.S.C. 1051 *et seq.*, which provides for the Federal registration of trademarks, service marks, collective trademarks and service marks, collective membership marks, and certification marks. Individuals and businesses that use or intend to use such marks in commerce may file an application to register their mark with the USPTO. Such individuals and businesses may also submit various communications to the USPTO during the prosecution of an application.

This information collection covers the various communications that may be submitted by the applicant, including providing additional information needed to process a request to delete a particular filing basis from an application or to divide an application identifying multiple goods and/or services into two or more separate applications. This information collection also covers requests for a 6-month extension of time to file a statement that the mark is in use in commerce or petitions to revive an application that abandoned for failure to submit a timely response to an office action or a timely statement of use or extension request. This information collection also covers circumstances in which an applicant may expressly abandon an application by filing a written request for withdrawal of the application.

The regulations implementing the Act are set forth in 37 CFR part 2. These regulations mandate that each register entry include the mark, the goods and/or services in connection with which the mark is used, ownership information, dates of use, and certain other information. The USPTO also provides similar information concerning pending applications. The register and pending application information may be accessed by an individual or by businesses to determine the availability

of a mark. By accessing the USPTO’s information, parties may reduce the possibility of initiating use of a mark previously adopted by another. The Federal trademark registration process may thereby reduce the number of filings between both litigating parties and the courts.

II. Method of Collection

Items in this information collection must be submitted via online electronic submissions. In limited circumstances, applicants may be permitted to submit the information in paper form by mail, fax, or hand delivery.

III. Data

OMB Control Number: 0651-0054.

Forms: (PTO = Patent and Trademark Office)

- PTO Form 1553 (Trademark/Service Mark Allegation of Use (Statement of Use/Amendment to Allege Use))
- PTO Form 1581 (Request for Extension of Time to File a Statement of Use)
- PTO Form 2194 (Petition to Revive Abandoned Application—Failure to Respond Timely to Office Action)
- PTO Form 2195 (Petition to Revive Abandoned Application—Failure to File Timely Statement of Use or Extension Request)
- PTO Form 2200 (Request to Delete Section 1(b) Basis, Intent to Use)
- PTO Form 2202 (Request for Express Abandonment (Withdrawal) of Application)
- PTO Form 2301 (Petition to Director)

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

Affected Public: Private sector; individuals or households.

Estimated Number of Respondents: 333,582 respondents per year.

Estimated Number of Responses: 333,582 responses per year.

Estimated Time per Response: The USPTO estimates that it will take the public from approximately 27 minutes (0.5 hours) to 65 minutes (1.1 hours) to complete a response, depending on the complexity of the situation. This includes the time to gather the necessary information, prepare the appropriate documents, and submit the information to the USPTO.

Estimated Total Annual Respondent Burden Hours: 208,219 hours.

Estimated Total Annual Respondent (Hourly) Cost Burden: \$83,287,600.

¹ 2019 Report of the Economic Survey, published by the Committee on Economics of Legal Practice of the American Intellectual Property Law

Association (AIPLA); <https://www.aipla.org/detail/journal-issue/2019-report-of-the-economic-survey>.

The USPTO uses the mean rate for attorneys in private firms which is \$400 per hour.

TABLE 1—BURDEN HOUR/BURDEN COST TO RESPONDENTS
[Private sector]

Item No.	Item	Estimated annual respondents	Estimated annual responses (year)	Estimated time for response (hours)	Estimated annual burden (hour/year)	Rate ¹ (\$/hour)	Estimated annual burden
			(a)	(b)	(a) × (b) = c	(d)	(c) × (d) = e
1	Trademark/Service Mark Allegation of Use (Amendment to Allege Use/Statement of Use) (PTO Form 1553).	70,451	70,451	0.9 (55 minutes)	63,406	\$400	\$25,362,400
2	Request for Extension of Time to File a Statement of Use (PTO Form 1581).	172,942	172,942	0.5 (27 minutes)	86,471	400	34,588,400
3	Petition to Revive Abandoned Application—Failure to Respond Timely to Office Action (PTO Form 2194).	12,924	12,924	0.9 (55 minutes)	11,632	400	4,652,800
4	Petition to Revive Abandoned Application—Failure to File Timely Statement of Use or Extension Request (PTO Form 2195).	667	667	0.6 (35 minutes)	400	400	160,000
5	Request to Delete Section 1(b) Basis, Intent to Use (PTO Form 2200).	1,400	1,400	0.4 (25 minutes)	560	400	224,000
6	Request for Express Abandonment (Withdrawal) of Application (PTO Form 2202).	5,600	5,600	0.4 (25 minutes)	2,240	400	896,000
7	Request to Divide Application	2,400	2,400	0.6 (35 minutes)	1,440	400	576,000
8	Response to Intent-to-Use (ITU) Divisional Unit Office Action.	2	2	1.1 (65 minutes)	2	400	800
9	Response to Petition to Revive Deficiency Letter.	240	240	0.8 (45 minutes)	192	400	76,800
10	Petition to the Director (PTO Form 2301).	160	160	0.9 (55 minutes)	144	400	57,600
11	Petition to Revive with Request to Delete Section 1(b) Basis or to Delete ITU Goods/Services/Collective Membership Organization After NOA.	80	80	1.1 (65 minutes)	88	400	35,200
Total ...		266,866	266,866		166,575		66,630,000

TABLE 2—BURDEN HOUR/BURDEN COST TO RESPONDENTS
[Individuals or households]

Item No.	Item	Estimated annual respondents	Estimated annual responses (year)	Estimated time for response (hours)	Estimated annual burden (hour/year)	Rate ² (\$/hour)	Estimated annual burden
			(a)	(b)	(a) × (b) = c	(d)	(c) × (d) = e
1	Trademark/Service Mark Allegation of Use (Amendment to Allege Use/Statement of Use) (PTO Form 1553).	17,613	17,613	0.9 (55 minutes)	15,852	\$400	\$6,340,800
2	Request for Extension of Time to File a Statement of Use (PTO Form 1581).	43,235	43,235	0.5 (27 minutes)	21,618	400	8,647,200
3	Petition to Revive Abandoned Application—Failure to Respond Timely to Office Action (PTO Form 2194).	3,231	3,231	0.9 (55 minutes)	2,908	400	1,163,200
4	Petition to Revive Abandoned Application—Failure to File Timely Statement of Use or Extension Request (PTO Form 2195).	167	167	0.6 (35 minutes)	100	400	40,000
5	Request to Delete Section 1(b) Basis, Intent to Use (PTO Form 2200).	350	350	0.4 (25 minutes)	140	400	56,000
6	Request for Express Abandonment (Withdrawal) of Application (PTO Form 2202).	1,400	1,400	0.4 (25 minutes)	560	400	224,000
7	Request to Divide Application	600	600	0.6 (35 minutes)	360	400	144,000
9	Response to Petition to Revive Deficiency Letter.	60	60	0.8 (45 minutes)	48	400	19,200
10	Petition to the Director (PTO Form 2301).	40	40	0.9 (55 minutes)	36	400	14,400
11	Petition to Revive with Request to Delete Section 1(b) Basis or to Delete ITU; Goods/Services/Collective Membership Organization After NOA.	20	20	1.1 (65 minutes)	22	400	8,800
Total ...		66,716	66,716		41,644		16,657,600

Estimated Total Annual (Non-Hour) Respondent Cost Burden: \$37,867,690. There are no capital start-up,

maintenance, or recordkeeping costs associated with this information collection. However, this information

collection does have annual (non-hour) cost burden in the form of postage costs and filing fees.

TABLE 3—FILING FEES—NON-HOUR COST BURDEN

Item No.	Item	Estimated annual responses (a)	Estimated fee amount (b)	Estimated non-hour cost burden (a) × (b)
1	Trademark/Service Mark Allegation of Use (Amendment to Allege Use/Statement of Use) (Paper).	27	\$200	\$5,400
1	Trademark/Service Mark Allegation of Use (Amendment to Allege Use/Statement of Use) (TEAS).	88,037	100	8,803,700
2	Request for Extension of Time to File a Statement of Use (Paper)	59	225	13,275
2	Request for Extension of Time to File a Statement of Use (TEAS)	216,118	125	27,014,750
3	Petition to Revive Abandoned Application—Failure to Respond Timely to Office Action (Paper).	5	200	1,000
3	Petition to Revive Abandoned Application—Failure to Respond Timely to Office Action (TEAS).	16,150	100	1,615,000
4	Petition to Revive Abandoned Application—Failure to File Timely Statement of Use or Extension Request (Paper).	1	200	200
4	Petition to Revive Abandoned Application—Failure to File Timely Statement of Use or Extension Request (TEAS).	833	100	83,300
7	Request to Divide Application (Paper)	1	200	200
7	Request to Divide Application (TEAS Global)	2,999	100	299,900
10	Petition to the Director (Paper)	1	200	200
10	Petition to the Director (TEAS)	199	100	19,900
11	Petition to Revive With Request to Delete Section 1(b) Basis or to Delete ITU Goods/Services/Collective Membership Organization After NOA (Paper).	1	200	200
11	Petition to Revive With Request to Delete Section 1(b) Basis or to Delete ITU Goods/Services/Collective Membership Organization After NOA (TEAS Global).	99	100	9,900
Total	37,866,925

The filing fees for several items in this information collection are charged per class of goods and/or services; therefore, the filing fees will vary for each respondent depending on the number of classes. The total filing fees of \$37,866,925 shown here are based on the minimum fee of one class for those items for which a fee is required.

Although the USPTO prefers that the items in this information collection be submitted electronically, the items may, in limited situations, be submitted by mail through the United States Postal Service (USPS). The USPTO estimates that the average postage cost for a mailed submission, using a Priority Mail 2-day flat rate legal envelope, will be \$8.05. The USPTO estimates that with a total of 95 permitted paper submissions, the postage costs in this information collection will be \$765.

The USPTO estimates that the total annual (non-hour) respondent cost burden for this information collection, in the form of postage costs and filing fees is \$37,867,690 per year.

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

IV. Request for Comments

The USPTO is soliciting public comments to:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected; and

(d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

All comments submitted in response to this notice are a matter of public record. USPTO will include or

summarize each comment in the request to OMB to approve this information collection. Before including an address, phone number, email address, or other personal identifying information in a comment, be aware that the entire comment—including personal identifying information—may be made publicly available at any time. While you may ask in your comment to withhold personal identifying information from public view, USPTO cannot guarantee that it will be able to do so.

Kimberly Hardy,

Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

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² 2019 Report of the Economic Survey, published by the Committee on Economics of Legal Practice of the American Intellectual Property Law

Association (AIPLA); <https://www.aipla.org/detail/journal-issue/2019-report-of-the-economic-survey>.

The USPTO uses the mean rate for attorneys in private firms which is \$400 per hour.