



3510-16-P

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### Patent Trial and Appeal Board (PTAB) Actions

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The United States Patent and Trademark Office (USPTO), as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), invites comments on a proposed extension of an existing information collection: Patent Trial and Appeal Board (PTAB) Actions.

**DATES:** Written comments must be submitted on or before [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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

- E-mail: [InformationCollection@uspto.gov](mailto:InformationCollection@uspto.gov). Include “0651-0063 comment” in the subject line of the message.
- Mail: Marcie Lovett, Records Management Division Director, 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 Linda Horner, Administrative Patent Judge, Patent Trial and Appeal Board, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450; by telephone at 571-272-9797; or by e-mail to [linda.horner@uspto.gov](mailto:linda.horner@uspto.gov). Additional information about this collection is also available at <http://www.reginfo.gov> under “Information Collection Review.”

## **SUPPLEMENTARY INFORMATION**

### **I. Abstract**

The Patent Trial and Appeal Board (PTAB or Board) is established by statute under 35 U.S.C. 6. This statute directs, in relevant part, that PTAB shall “on written appeal of an applicant, review adverse decisions of examiners upon applications for patents pursuant to section 134(a).” PTAB has the authority, under 35 U.S.C. 134 and 306 to decide appeals in applications and ex parte reexamination proceedings, and under pre-AIA sections of the Patent Act, i.e., 35 U.S.C. 134 and 315, to decide appeals in inter partes reexamination proceedings. In addition, 35 U.S.C. 6 establishes the membership of PTAB as the Director, the Deputy Director, the Commissioner for Patents, the Commissioner for Trademarks, and the Administrative Patent Judges. Each appeal is decided by a merits panel of at least three members of the Board. The Board’s responsibilities under the statute include the review of ex parte appeals from adverse decisions of examiners in those situations where a written appeal is taken by a dissatisfied applicant or patent owner. In inter partes reexamination appeals, PTAB reviews examiner’s decisions adverse to a patent

owner or a third-party requester. PTAB's opinions and decisions for publicly available files are published on the USPTO Web site.

There are no forms associated with these items. However, they are governed by rules in Part 41. Failure to comply with the appropriate rule may result in dismissal of the appeal or denial of entry of the paper.

## **II. Method of Collection**

By mail, hand delivery, or facsimile when an applicant files a brief, petition, amendment, or request. These papers can also be filed as attachments through EFS-Web.

## **III. Data**

*OMB Number:* 0651-0063.

*Form Number(s):* None.

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

*Affected Public:* Individuals or households, businesses or other for profits, non-profit institutions, and the Federal Government.

*Estimated Number of Respondents:* 23,660 responses per year. The USPTO estimates that approximately 25% (5,915) of these responses will be from small entities and approximately 5% (1,183) of these responses will be from micro entities. The USPTO also estimates that approximately 93% (22,004) of the briefs, requests, petitions, and amendments will be filed electronically.

*Estimated Time Per Response:* The USPTO estimates that it takes the public approximately 2 to 32 hours to complete this information, depending on the complexity of the request. This includes the time to gather the necessary

information, prepare the brief, petition, and other papers, 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 brief, petition, and other papers, and submit it to the USPTO, whether the applicant submits it in paper form or electronically.

*Estimated Total Annual Respondent Burden Hours: 555,098 hours per year.*

*Estimated Total Annual Respondent Cost Burden: \$227,590,180 per year.* The USPTO expects that all of the information in this collection will be prepared by an attorney. Using the professional hourly rate of \$410 for attorneys in private firms, the USPTO estimates that the total respondent cost burden for this collection is \$227,590,180 per year.

<b>IC #</b>	<b>Item</b>	<b>Estimated time for Response (hours)</b>	<b>Estimated annual responses</b>	<b>Estimated annual burden hours</b>	<b>Rate (\$/hr)</b>
1	Amendment	2	19	38	\$410
1	Electronic Amendment	2	248	496	\$410
2	Appeal Brief	32	1,135	36,320	\$410
2	Electronic Appeal Brief	32	15,077	482,464	\$410
3	Reply Brief	5	463	2,315	\$410
3	Electronic Reply Brief	5	6,151	30,755	\$410
4	Request for Rehearing Before the PTAB	5	31	155	\$410
4	Electronic Request for Rehearing Before the PTAB	5	411	2,055	\$410
5	Petitions to the Chief Administrative Patent Judge Under 37 CFR 41.3	4	9	36	\$410

5	Electronic Petitions to the Chief Administrative Patent Judge Under 37 CFR 41.3	4	116	464	\$410
	<b>TOTAL</b>	----	<b>23,660</b>	<b>555,098</b>	---

*Estimated Total Annual Non-hour Respondent Cost Burden:* \$46,049,937.65 per year (\$46,039,250 in fees and \$10,687.50 in postage costs). There are no maintenance, operation, capital start-up, or recordkeeping costs associated with this information collection. However, this collection does have annual (non-hour) costs in the form of postage costs and fees, which are listed in the tables below.

IC #	Item	Annual Estimated Responses	Fee (\$)	Total Cost (\$)
1	Filing a Brief in Support of an Appeal in an Application or Ex Parte Reexamination Proceeding to the Board	16,202	\$0.00	\$0.00
2	Filing a brief in support of an appeal in an inter partes reexamination proceeding (large)	10	\$2,000.00	\$20,000.00
2	Filing a brief in support of an appeal in an inter partes reexamination proceeding (small)	1	\$1,000.00	\$1,000.00
2	Filing a brief in support of an appeal in an inter partes reexamination proceeding (micro)	1	\$500.00	\$500.00
3	Forwarding an Appeal in an Application or Ex Parte Reexamination Proceeding to the Board (large)	11,341	\$2,000.00	\$22,682,000.00
3	Forwarding an Appeal in an Application or Ex Parte Reexamination Proceeding to the Board (small)	4,051	\$1,000.00	\$4,051,000.00

3	Forwarding an Appeal in an Application or Ex Parte Reexamination Proceeding to the Board (micro)	810	\$500.00	\$405,000.00
4	Notice of appeal (large)	18,900	\$800.00	\$15,120,000.00
4	Notice of appeal (small)	6,750	\$400.00	\$2,700,000.00
4	Notice of appeal (micro)	1,350	\$200.00	\$270,000.00
5	Request for oral hearing (large)	508	\$1,300.00	\$660,400.00
5	Request for oral hearing (small)	181	\$650.00	\$117,650.00
5	Request for oral hearing (micro)	36	\$325.00	\$11,700.00
	<b>Total</b>	<b>60,139</b>	<b>---</b>	<b>\$46,039,250.00</b>

The briefs, petitions, and other papers may be submitted by mail through the United States Postal Service. The USPTO expects the items in this collection to be mailed by Express Mail using the flat rate envelope, which can accommodate both the varying submission weights of these submissions and the various postal zones. Using the Express Mail flat rate cost for mailing envelopes, the USPTO estimates that the average cost for sending these submissions by Express Mail will be \$6.45 and that approximately 1,657 will be mailed to the USPTO. The USPTO estimates that the total postage cost for this collection will be \$10,687.65 per year.

IC #	Item	Responses	Postage Costs (\$)	Total Postage Cost (\$)
1	Amendment	19	\$6.45	\$122.55
2	Appeal Brief	1,135	\$6.45	\$7,320.75
3	Reply Brief	463	\$6.45	\$2,986.35

<b>4</b>	Request for Rehearing Before the PTAB	31	\$6.45	\$199.95
<b>5</b>	Petitions to the Chief Administrative Patent Judge Under 37 CFR 41.3	9	\$6.45	\$58.05
	<b>Total Postage Costs</b>	<b>1,657</b>	-----	<b>\$10,687.65</b>

#### **IV. Request for Comments**

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.

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.

Dated: February 13, 2017

Rhonda Foltz,

*Office of Information Management Services, OCIO*

*United States Patent and Trademark Office*

*United States Patent and Trademark Office.*

**BILLING CODE: 3510-16-P**

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