



**3510-16-P**

## **DEPARTMENT OF COMMERCE**

### **United States Patent and Trademark Office**

#### **Legal Processes**

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

**SUMMARY:** The United States Patent and Trademark Office (USPTO), as required by the Paperwork Reduction Act of 1995, invites comments on a proposed extension of the existing information collection: 0651-0046 (Legal Processes).

**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 “0651-0046 comment” in the subject line of the message.
- Federal Rulemaking Portal: <http://www.regulations.gov>.
- Mail: Kyu Lee, Office of General Law, 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 Kyu Lee, Office of General Law, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450; by telephone at 571-272-3000; or by e-mail at [Kyu.Lee@uspto.gov](mailto:Kyu.Lee@uspto.gov) with “0651-0046

inquiry” in the subject line. Additional information about this collection is also available at <http://www.reginfo.gov> under “Information Collection Review.”

## **SUPPLEMENTARY INFORMATION**

### **I. Abstract**

This collection covers information requirements related to civil actions and claims involving current and former employees of the United States Patent and Trademark Office (USPTO). The rules for these legal processes may be found under 37 CFR Part 104, which outlines procedures for service of process, demands for employee testimony and production of documents in legal proceedings, reports of unauthorized testimony, employee indemnification, and filing claims against the USPTO under the Federal Tort Claims Act (28 U.S.C. § 2672) and the corresponding Department of Justice regulations (28 CFR Part 14). The public may also petition the USPTO Office of General Counsel under 37 CFR 104.3 to waive or suspend these rules in extraordinary cases.

The procedures under 37 CFR Part 104 ensure that service of process intended for current and former employees of the USPTO is handled properly. The USPTO will only accept service of process for an employee acting in an official capacity. This collection is necessary so that respondents or their representatives can serve a summons or complaint on the USPTO, demand employee testimony and documents related to a legal proceeding, or file a claim under the Federal Tort Claims Act. Respondents may also petition the USPTO to waive or suspend these rules for legal processes. This collection is also

necessary so that current and former USPTO employees may properly forward service and demands to the Office of General Counsel, report unauthorized testimony, and request indemnification. The USPTO covers current employees as respondents under this information collection even though their responses do not require approval under the Paperwork Reduction Act. In those instances where both current and former employees may respond to the USPTO, the agency estimates that the number of respondents will be small.

There are no forms provided by the USPTO for this collection. For filing claims under the Federal Tort Claims Act, the public may use Standard Form 95 “Claim for Damage, Injury, or Death,” which is provided by the Department of Justice and approved by the Office of Management and Budget (OMB) under OMB Control Number 1105-0008.

## **II. Method of Collection**

By mail or hand delivery to the USPTO.

## **III. Data**

*OMB Number:* 0651-0046.

*Form Number(s):* None.

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

*Affected Public:* Individuals or households; businesses or other for-profits; not-for-profit institutions; and the Federal Government.

*Estimated Number of Respondents:* 299 responses per year. The USPTO estimates that approximately 10% of these responses will be from small entities.

*Estimated Time per Response:* The USPTO estimates that it will take the public from 5 minutes (0.08 hours) to 6 hours to prepare a single item in this collection, including gathering the necessary information, preparing the appropriate documents, and submitting the information required for this collection.

*Estimated Total Annual Hour Burden:* 130 hours.

*Estimated Total Annual Cost Burden (Hourly):* \$56,712.27. The USPTO estimates that the information in this collection will be prepared by attorneys and former employees at an hourly rate of \$438, except for the requests for employee indemnification, which generally come from professional and supervisory staff at an hourly rate of \$79.78. The attorney rates are found in the 2017 Report of the Economic Survey of the America Intellectual Property Law Association (AIPLA). Since the majority of the former employees affected by this collection are attorneys, the estimated attorney hourly rate will be used for former employees as well. Using these hourly rates, the USPTO estimates that the total respondent cost burden for this collection will be approximately \$56,712.27 per year.

**Table 1: Respondent Hourly Cost Burden**

IC Number	Item	Estimated Response Time (a)	Estimated Annual Responses (b)	Estimated Annual Burden Hours (a) x (b) = (c)	Rate (\$/hr) (d)	Total Cost (\$/yr) (c) x (d) = (e)
1	Petition to Waive Rules	30 minutes	5	2.50 hours	\$438.00	\$1,095.00
2	Service of Process	5 minutes	243	20.17 hours	\$438.00	\$8,834.02

IC Number	Item	Estimated Response Time (a)	Estimated Annual Responses (b)	Estimated Annual Burden Hours (a) x (b) = (c)	Rate (\$/hr) (d)	Total Cost (\$/yr) (c) x (d) = (e)
3	Forwarding Service	10 minutes	7	1.12 hours	\$438.00	\$490.56
4	Employee Testimony and Production of Documents in Legal Proceedings	2 hours	33	66.00 hours	\$438.00	\$28,908.00
5	Forwarding Demands	10 minutes	10	1.60 hours	\$438.00	\$700.80
6	Report of Unauthorized Testimony	30 minutes	1	0.50 hours	\$438.00	\$219.00
7	Report of Possible Indemnification Cases	30 minutes	3	1.50 hours	\$438.00	\$657.00
8	Employee Indemnification	30 minutes	1	0.50 hours	\$79.78	\$39.89
9	Tort Claims	6 hours	6	36.00 hours	\$438.00	\$15,768.00
	<b>Totals</b>	-----	<b>309</b>	<b>130</b>	-----	<b>\$56,712.27</b>

*Estimated Total Annual Non-hour Respondent Cost Burden: \$6,928.* There are no capital start-up, maintenance, or recordkeeping costs associated with this information collection. However, this collection does have annual (non-hour) costs in the form of filing fees and postage costs.

#### Filing Fees

This collection has filing fees associated with the petition to waive or suspend the legal process rules under 37 CFR 104.3. The USPTO estimates that approximately 5 petitions will be filed per year with a fee of \$130, for a total fee cost of \$650. There are no other fees associated with this information collection.

#### Postage Costs

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 for a mailed submission, other than a Service of Process, will be \$1.45 and that up to 56 of these submissions will be mailed to the USPTO per year, for a postage cost of \$82.64. The USPTO estimates that the average postage for a Service of Process will be mailed Priority Express at a cost of \$25.50 and that up to 243 of these submissions will be mailed to the USPTO per year, for a postage cost of \$6,197. The total estimated postage cost for this collection is approximately \$6,279 per year.

Therefore, the total annual (non-hour) respondent cost burden for this collection, in the form of filing fees (\$650.00) and postage costs (\$6,279), is estimated to be approximately \$6,928 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, including the validity of the methodology and assumptions used;

(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, including through the use of automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

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.

Marcie Lovett,

Records Management Division Director, OCIO,

United States Patent and Trademark Office.

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

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