



## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### Secrecy and License to Export

**ACTION:** Notice of renewal of information 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 the extension of an existing information collection: 0651–0034 (Secrecy and License to Export).

**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 “0651-0034 comment” in the subject line of the message.
- *Federal Rulemaking Portal:* <http://www.regulations.gov>.

- *Mail:* Marcie Lovett, Records and Information Governance Branch, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–145.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Raul Tamayo, Senior 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 with “Paperwork” 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**

In the interest of national security, patent laws and rules place certain limitations on the disclosure of information contained in patents and patent applications and on the filing of applications for patents in foreign countries.

In particular, whenever the publication or disclosure of an invention by the publication of an application or by the granting of a patent is, in the opinion of the head of an interested Government agency, determined to be detrimental to national security, the Commissioner for Patents at the USPTO must issue a secrecy order and withhold the publication of a patent application and the grant of a patent for such period as the national interest requires. A patent will not be issued on the application, nor will the

application be published, as long as the secrecy order is in effect. If a secrecy order is applied to an international application, the application will not be forwarded to the International Bureau as long as the secrecy order is in effect.

The Commissioner for Patents can issue three types of secrecy orders, each of a different scope. The first type, Secrecy Order and Permit for Foreign Filing in Certain Countries, is intended to permit the widest utilization of the technical data in the patent application while still controlling any publication or disclosure that would result in an unlawful exportation. The second type, the Secrecy Order and Permit for Disclosing Classified Information, is to treat classified technical data presented in a patent application in the same manner as any other classified material. The first and second types of secrecy orders involve the Department of Defense. The third type of secrecy order is used where the other types of orders do not apply, including orders issued by direction of agencies other than the Department of Defense.

Under the provision of 35 U.S.C. 181, a secrecy order remains in effect for a period of one year from its date of issuance. A secrecy order may be renewed for additional periods of not more than one year upon notice by a government agency that the national interest continues to require the order. USPTO notifies the applicant of the renewal.

This information collection covers information gathered in petitions for permits to allow disclosure, modification, or rescission of the secrecy order, or to obtain a general or group permit when the USPTO places a secrecy order on a patent application. In

each of these circumstances, the petition is forwarded to the appropriate agency for decision. Also, the Commissioner for Patents at the USPTO may rescind any order upon notification by the heads of the departments and the chief officers of the requesting agencies that the disclosure of the invention is no longer deemed detrimental to the national security.

Unless expressly ordered otherwise, action on the application by the USPTO and prosecution by the applicant will proceed during the time an application is under secrecy order to one of the specific points identified at 37 CFR 5.3. For example, as set forth at 37 CFR 5.3(a), national applications under secrecy order that come to a final rejection must be appealed or otherwise prosecuted to avoid abandonment. Applicants must complete the appeals in such cases, but unless specifically indicated by the Commissioner for Patents at the USPTO, the appeals will not be set for hearing until the secrecy order is removed.

In addition, this collection covers information gathered with respect to foreign filing licenses. The filing of a patent application is considered a request for a foreign filing license. However, in some instances an applicant may need a license for filing a patent application in foreign countries prior to a filing in the USPTO or sooner than the anticipated licensing of a pending patent application.

For such circumstances, this collection covers petitions for a foreign filing license either with or without a corresponding United States application. In addition, this collection covers petitions to change the scope of a license and petitions for a

retroactive license for instances when a patent application is filed through error in a foreign country without the appropriate filing license.

This collection includes the information needed by the USPTO to review the various types of petitions regarding secrecy orders and foreign filing licenses. This collection of information is required by 35 U.S.C. 181-188 and administered through 37 CFR 5.1-5.33.

## **II. Method of Collection**

By mail, facsimile or hand carried to the USPTO.

## **III. Data**

*OMB Number:* 0651-0034.

*Form Number(s):* There are no forms associated with this collection.

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

*Affected Public:* Individuals or households; Businesses or other for-profits; not-for-profit institutions.

*Estimated Number of Respondents:* 4,434 responses per year. The USPTO estimates that approximately 20% (886.80) of these responses will be from small entities.

*Estimated Time Per Response:* The USPTO estimates that it will take the public from 30 minutes (0.5 hours) to 4 hours to gather the necessary information, prepare the appropriate documents, and submit the information required for this collection.

*Estimated Total Annual Respondent Burden Hours:* 2,797.50 hours.

*Estimated Total Annual Respondent Cost Burden: \$1,225,305.* The USPTO expects that the information in this collection will be prepared by intellectual property attorneys at an estimated rate of \$438 per hour. The attorney rates are found in the 2017 Report of the Economic Survey of the America Intellectual Property Law Association (AIPLA). Using this hourly rate, the USPTO estimates that the respondent cost burden for this collection will be approximately \$1,225,305 per year.

#	Item	Estimated Time for Response (Hours) (a)	Estimated Annual Responses (b)	Estimated Annual Burden Hours (a) x (b) / 60 = (c)	Rate (\$/hr) (d)	Total Cost Burden (e) (c x d)
1	Petition for Rescission of Secrecy Order	3.0	10	30	\$438	\$13,140
2	Petition to Disclose or Modification of Secrecy Order	2.0	20	40	\$438	\$17,520
3	Petition for General and Group Permits	1.0	1	1	\$438	\$438
4	Petition for Expedited Handling of License (no corresponding application)	0.5	4,000	2,000	\$438	\$876,000
5	Petition for Expedited Handling of License (corresponding U.S. application)	0.5	250	125	\$438	\$54,750
6	Petition for Changing Scope of License	0.5	3	1.5	\$438	\$657
7	Petition for Retroactive License	4.0	150	600	\$438	\$262,800
	<b>Totals</b>	---	<b>4,434</b>	<b>2,797.50</b>	---	<b>\$1,225,305</b>

Estimated Total Annual (Non-hour) Respondent Cost Burden: \$788,286.60. There are no capital start-up, maintenance, or record keeping costs associated with this information collection. However, this collection does have annual (non-hour) costs in

the form of filing fees for the foreign filing petitions and postage costs. No fees are associated with the secrecy order petitions.

The license petitions all charge the 37 CFR 1.17(g) fee, for which small and micro entity discounts recently have been introduced. The USPTO estimates that 20% of the responses in this collection will come from small entities and approximately 10% of the small entity respondents will qualify as micro entities.

#	Item	Responses (a)	Filing Fee (\$) (b)	Total Non-Hour Cost Burden (a) x (b) (c)
4	Petition for Expedited Handling of License (no corresponding application)	3,200	\$200.00	\$640,000.00
4	Petition for Expedited Handling of License (no corresponding application) (small entity)	720	\$100.00	\$72,000.00
4	Petition for Expedited Handling of License (no corresponding application) (micro entity)	80	\$50.00	\$4,000.00
5	Petition for Expedited Handling of License (corresponding U.S. application)	200	\$200.00	\$40,000.00
5	Petition for Expedited Handling of License (corresponding U.S. application) (small entity)	45	\$100.00	\$4,500.00
5	Petition for Expedited Handling of License (corresponding U.S. application) (micro entity)	5	\$50.00	\$250.00
6	Petition for Changing Scope of License	1	\$200.00	\$200.00
6	Petition for Changing Scope of License (small entity)	1	\$100.00	\$100.00
6	Petition for Changing Scope of License (micro entity)	1	\$50.00	\$50.00
7	Petition for Retroactive License	120	\$200.00	\$24,000.00
7	Petition for Retroactive License (small entity)	27	\$100.00	\$2,700.00
7	Petition for Retroactive License (micro entity)	3	\$50.00	\$150.00

#	Item	Responses (a)	Filing Fee (\$) (b)	Total Non-Hour Cost Burden (a) x (b) (c)
	<b>Totals</b>	<b>4,434</b>	<b>- - -</b>	<b>\$787,950.00</b>

The USPTO estimates that 99% of the petitions in this collection are submitted by facsimile or hand carried because of the quick turnaround required. For the 1% of the public that chooses to submit the petitions to the USPTO by mail through the United States Postal Service, the USPTO estimates that the average USPS Priority Mail postage cost for a legal flat rate envelop is estimated to be \$7.65 , and that 44 submissions will be mailed to the USPTO per year for a total estimated postage cost of \$336.60.

#### Postage Costs

IC Number	Item	Estimated Mailed Responses (a)	Estimated Postage Rate (b)	Total Annual (Non-Hour) Cost Burden (a) x (b) = (c)
4	Petition for Expedited Handling of License (no corresponding application)	40	\$7.65	\$306
5	Petition for Expedited Handling of License (corresponding U.S. application)	2	\$7.65	\$15.30
7	Petition for Retroactive License	2	\$7.65	\$15.30
	<b>TOTAL</b>	<b>44</b>	<b>-----</b>	<b>\$336.60</b>

Therefore, the USPTO estimates that the total (non-hour) cost burden for this collection in the form of filing fees and postage costs is estimated to be approximately \$788,286.60.

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

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

USPTO invites public comments on:

- (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (b) 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, e.g., 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.

**Marcie Lovett,**

*Director, Records and Information Governance Branch, OAS,*

*Office of the Chief Administrative Officer,*

*United States Patent and Trademark Office.*

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