



## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Legal Processes

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

**ACTION:** Notice of information collection; request for comments.

**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: 0651-0046 (Legal Processes). The purpose of this notice is to allow 60 days for public comments preceding submission of the information collection to the Office of Management and Budget (OMB).

**DATES:** To ensure consideration, you must submit comments regarding this information collection on or before [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**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](mailto:InformationCollection@uspto.gov). Include “0651-0046 comment” in the subject line of the message.
- Federal eRulemaking Portal: <http://www.regulations.gov>.

- Mail: Justin Isaac, 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 Kyu Lee, Office of General Law at: United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450; 571-272-3000; or [Kyu.Lee@uspto.gov](mailto:Kyu.Lee@uspto.gov) with “0651-0046 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**

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.

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.

## **II. Method of Collection**

Items in this information collection must be submitted by mail.

## **III. Data**

*OMB Control Number:* 0651-0046.

*Forms:*

- Standard Form 95 (Claim for Damage, Injury, or Death)

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

*Affected Public:* Private sector.

*Respondent’s Obligation:* Required to obtain or retain benefits.

*Estimated Number of Annual Respondents:* 309 respondents.

*Estimated Number of Annual Responses:* 309 responses.

*Estimated Time per Response:* The USPTO estimates that the responses in this information collection will take the public approximately 5 minutes (0.08 hours) to 6 hours to complete. This includes the time to gather the necessary information, create the document, and submit the completed item(s) to the USPTO.

*Estimated Total Annual Respondent Burden Hours:* 131 hours.

*Estimated Total Annual Respondent Hourly Cost Burden:* \$58,219.

## **Table 1: Total Burden Hours and Hourly Costs to Private Sector Respondents**

| Item No. | Item  | Estimated Annual Respondents<br>(a) | Responses per Respondent<br>(b) | Estimated Annual Responses<br>(a) x (b) =<br>(c) | Estimated Time for Response (Hours)<br>(d) | Estimated Burden (hour/year)<br>(c) x (d) =<br>(e) | Rate <sup>1</sup> (\$/hour)<br>(f) | Estimated Annual Respondent Cost Burden<br>(e) x (f) = (g) |
|----------|---|-------------------------------------|---------------------------------|--|--|--|------------------------------------|--|
| 1        | Petition to Waive Rules   | 5                                   | 1                               | 5  | 0.50<br>(30 minutes)                       | 3  | \$447                              | \$1,341  |
| 2        | Service of Process  | 243                                 | 1                               | 243  | 0.08<br>(5 minutes)                        | 19   | \$447                              | \$8,493  |
| 3        | Forwarding Service  | 7                                   | 1                               | 7  | 0.17<br>(10 minutes)                       | 1  | \$447                              | \$447  |
| 4        | Employee Testimony and Production of Documents in Legal Proceedings | 33                                  | 1                               | 33   | 2  | 66   | \$447                              | \$29,502   |
| 5        | Forwarding Demands  | 10                                  | 1                               | 10   | 0.17<br>(10 minutes)                       | 2  | \$447                              | \$894  |
| 6        | Report of Unauthorized Testimony                                    | 1                                   | 1                               | 1  | 0.50<br>(30 minutes)                       | 1  | \$447                              | \$447  |
| 7        | Report of Possible Indemnification Cases                            | 3                                   | 1                               | 3  | 0.50<br>(30 minutes)                       | 2  | \$447                              | \$894  |
| 8        | Employee Indemnification  | 1                                   | 1                               | 1  | 0.50<br>(30 minutes)                       | 1  | \$109.42                           | \$109  |
| 9        | Tort Claims   | 6                                   | 1                               | 6  | 6  | 36   | \$447                              | \$16,092   |
|          | <b>Totals</b>   | <b>309</b>                          | <b>---</b>                      | <b>309</b>                                       | <b>---</b>                                 | <b>131</b>   | <b>---</b>                         | <b>\$58,219</b>  |

*Estimated Total Annual Respondent Non-Hourly Cost Burden: \$1,379.* There are no capital start-up costs, maintenance costs, or recordkeeping costs associated with this information collection. However, the USPTO estimates that the total annual non-hourly cost burden for this information collection, in the form of filing fees and postage, is \$1,379.

### Filing Fees

<sup>1</sup> 2023 Report of the Economic Survey, published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association (AIPLA); pg. F-41. The USPTO uses the average billing rate for intellectual property work in all firms which is \$447 per hour (<https://www.aipla.org/home/news-publications/economic-survey>).

This collection has a filing fee associated with the petition to waive or suspend the legal process rules under 37 CFR 104.3. The fee is listed in Table 2 below.

**Table 2: Filing Fees**

| <b>Item No.</b> | <b>Item</b>   | <b>Estimated Annual Responses</b> | <b>Filing Fee (\$)</b> | <b>Non-hourly Cost Burden</b> |
|-----------------|---|-----------------------------------|------------------------|-------------------------------|
|                 |   | <b>(a)</b>                        | <b>(b)</b>             | <b>(a) x (b) = (c)</b>        |
| <b>1</b>        | Petition to waive or suspend the legal process rules under 37 CFR 104.3 | 5                                 | \$130                  | \$650                         |
|                 | <b>Totals</b>   | <b>5</b>                          | <b>-</b>               | <b>\$650</b>                  |

### Postage Costs

The USPTO estimates that all submissions in this collection will be submitted by mail. The USPTO estimates that 308 items will be submitted by mail in a large envelope. The average first-class postage for a four-ounce mailed submission in a large envelope is \$2.31, resulting in a total of \$711 for submissions other than a Service of Process. The USPTO estimates that 1 Service of Process will be submitted by certified mail in a Priority Mail flat-rate envelope with a return receipt. The USPTO estimates that the average cost for a certified Priority mail flat-rate envelope with a return receipt is \$17.87, resulting in \$18 for Service of Process submissions. Therefore, the USPTO estimates the total combined postage cost for this collection is \$729.

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

The USPTO is soliciting public comments to:

- (a) Evaluate 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) Evaluate the accuracy of the agency's estimate of the burden of the 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. The 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 personally identifiable information (PII) in a comment, be aware that the entire comment—including PII—may be made publicly available at any time. While you may ask in your comment to withhold PII from public view, the USPTO cannot guarantee that it will be able to do so.

**Justin Isaac,**

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

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