



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; Patent Trial and Appeal Board (PTAB) Appeals

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 (hereafter “USPTO” or “Agency”), as required by the Paperwork Reduction Act of 1995, invites comments on the extension and revision of an existing information collection: 0651-0063 (Patent Trial and Appeal Board (PTAB) Appeals). 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 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. Include “0651-0063 comment” in the subject line of the message.
- Federal eRulemaking Portal: <https://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.
- Telephone: Stacey White, 571-272-9797.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Stacey White at: Patent Trial and Appeal Board, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450; 571-272-9797; or Stacey.White@uspto.gov with “0651-0063 comment” in the subject line.

Additional information about this information collection is also available at <https://www.reginfo.gov/public/> under “Information Collection Review.”

SUPPLEMENTARY INFORMATION:

I. Abstract

The Patent Trial and Appeal Board (hereafter “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, 135, and 315, to decide appeals in *inter partes* reexamination proceedings and interferences. 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. Appeals and interference are 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 an examiner’s decision adverse to a patent owner or a third-party requester. PTAB’s opinions and decisions for publicly available files are published on the USPTO website.¹ The Board also conducts interference proceedings.

¹ <https://www.uspto.gov/patents/ptab/decisions>.

The items associated with this information collection include appeals in applications and *ex parte* reexamination proceedings, and appeals in *inter partes* reexamination proceedings and interference proceedings that are governed by the regulations in 37 CFR § 41. Failure to comply with the appropriate regulations may result in dismissal of the appeal or denial of entry of the submission.

II. Method of Collection

Items in this information collection may be submitted as electronic submissions.

Applicants may also submit the information in paper form by mail, fax, or hand delivery.

III. Data

OMB Control Number: 0651-0063.

Forms: (AIA = America Invents Act; SB = Specimen Book)

- PTO/AIA/31: (Notice of Appeal from the Examiner to the Patent Trial and Appeal Board).
- PTO/SB/31: (Notice of Appeal from the Examiner to the Board of Patent Appeals and Interferences).
- PTO/AIA/32: (Request for Oral Hearing before the Patent Trial and Appeal Board).
- PTO/SB/32: (Request for Oral Hearing before the Patent Trial and Appeal Board).

Type of Review: Extension and revision of a currently approved information collection.

Affected Public: Private Sector.

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

Frequency: On occasion.

Estimated Number of Annual Respondents: 16,905 respondents.

Estimated Number of Annual Responses: 31,494 responses.

Estimated Time per Response: The USPTO estimates that the responses in this information collection will take the public approximately 30 minutes (0.50 hours) to 120

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: 337,662 hours.

Estimated Total Annual Respondent Hourly Cost Burden: \$150,934,914.

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

Item No.	Item	Estimated Annual Respondents (a)	Responses per Respondent (b)	Estimated Annual Responses (a) x (b) = (c)	Estimated Time for Response (hours) (d)	Estimated Burden (hour/year) (c) x (d) = (e)	Rate ² (\$/hour) (f)	Estimated Annual Respondent Cost Burden (e) x (f) = (g)
1	Notice of Appeal	16,562	1	16,562	0.50 (30 minutes)	8,281	\$447	\$3,701,607
2	Appeal Brief	*	1	9,038	32	289,216	\$447	\$129,279,552
3	Amendment to Cancel Claims	*	1	112	2	224	\$447	\$100,128
4	Reply Brief	*	1	4,795	5	23,975	\$447	\$10,716,825
5	Petitions to the Chief Administrative Patent Judge Under 37 CFR § 41.3	*	1	35	4	140	\$447	\$62,580
6	Request for Oral Hearing	*	1	531	0.50 (30 minutes)	266	\$447	\$118,902
7	Request for Rehearing Before the PTAB	304	1	304	5	1,520	\$447	\$679,440
8	Statements, Motions, Oppositions, and Replies in Preliminary and Priority Phases of an Interference	39	3	117	120	14,040	\$447	\$6,275,880
	Totals	16,905	---	31,494	---	337,662	---	\$150,934,914

** These lines (2-6) are the same filers as the respondents in Item 1. As these are subsets of Item 1, they are not included in the total for this column.*

Estimated Total Annual Respondent Non-hourly Cost Burden: \$24,085,946. 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-hour cost burden for this information collection, in the form of filing fees and postage, is \$24,085,946.

² 2023 Report of the Economic Survey, published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association, 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>).

Filing Fees

The fees are listed in Table 2 below.

Table 2: Filing Fees

Item No.	Fee Code	Item	Estimated Annual Responses (a)	Fee (\$) (b)	Total Cost (\$) (a) x (b) = (c)
1	1401	Notice of appeal (undiscounted)	12,176	\$905	\$11,019,280
1	2401	Notice of appeal (small)	3,978	\$362	\$1,440,036
1	3401	Notice of appeal (micro)	408	\$181	\$73,848
2	1404	Filing a brief in support of an appeal in an <i>inter partes</i> reexamination proceeding (undiscounted)	1	\$2,260	\$2,260
2	2404	Filing a brief in support of an appeal in an <i>inter partes</i> reexamination proceeding (small)	1	\$904	\$904
2	3404	Filing a brief in support of an appeal in an <i>inter partes</i> reexamination proceeding (micro)	1	\$452	\$452
4	1413	Forwarding an Appeal in an Application or <i>Ex Parte</i> Reexamination Proceeding to the Board (undiscounted)	3,908	\$2,535	\$9,906,780
4	2413	Forwarding an Appeal in an Application or <i>Ex Parte</i> Reexamination Proceeding to the Board (small)	920	\$1,014	\$932,880
4	3413	Forwarding an Appeal in an Application or <i>Ex Parte</i> Reexamination Proceeding to the Board (micro)	97	\$507	\$49,179
5	1405/ 2405/ 3405	Petitions to the Chief Administrative Patent Judge under 37 CFR § 41.3 (undiscounted)	35	\$452	\$15,820
7	1403	Request for oral hearing (undiscounted)	382	\$1,460	\$557,720
7	2403	Request for oral hearing (small)	135	\$584	\$78,840
7	3403	Request for oral hearing (micro)	14	\$292	\$4,088
		Totals	22,056	---	\$24,082,087

Postage Costs

The briefs, petitions, amendments, and requests may be submitted by mail through the United States Postal Service. The USPTO estimates that 1% of the 31,494 items in this information collection will be submitted by postal mail, resulting in 315 mailed items. The USPTO estimates that the average postage cost for a mailed submission, using a Priority Mail legal flat-rate envelope, will be \$12.25. Therefore, the USPTO estimates the total mailing costs for this information collection is \$3,859.

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 for those who intend 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 advised that the entire comment—including PII—may be made publicly available at any time. While one may request in a 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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