



## 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; DOCX Submission Requirements

**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: 0651-0089 (DOCX Submission Requirements). 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 “0651-0089 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: Raul Tamayo, Senior Legal Advisor, 571-272-7728.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Raul Tamayo, Senior Legal Advisor at: United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450; 571-272-7728; or [raul.tamayo@uspto.gov](mailto:raul.tamayo@uspto.gov) with “0651-0089 comment” in the subject line. Additional information about this information collection is also available at <https://www.reginfo.gov> under “Information Collection Review.”

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Abstract**

The fee set forth in 37 CFR 1.16(u) took effect January 17, 2024, and is due for any application filed under 35 U.S.C. 111 for an original patent – except design, plant, or provisional applications – where the specification, claims, and/or abstract do not conform to the USPTO requirements for submission in the DOCX format. Therefore, the fee is due for nonprovisional utility applications filed under 35 U.S.C. 111, including continuing applications, that are not filed in the DOCX format. See *Setting and Adjusting Patent Fees During Fiscal Year 2020*, 85 FR 46932 (August 3, 2020).<sup>1</sup>

To provide a fair and reasonable transition to the DOCX format, the USPTO has, since April 2022, provided patent applicants with the option to submit a back-up applicant-generated PDF version of the application along with the DOCX file(s) when filing an application in Patent Center. See *Extension of the Option for Submission of a PDF With a Patent Application Filed in DOCX Format*, 88 FR 37036 (Jun. 6, 2023).<sup>2</sup>

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<sup>1</sup> <https://www.govinfo.gov/content/pkg/FR-2020-08-03/pdf/2020-16559.pdf>.

<sup>2</sup> <https://www.govinfo.gov/content/pkg/FR-2023-06-06/pdf/2023-11910.pdf>.

The USPTO also continues to offer DOCX training sessions for stakeholders. See [www.uspto.gov/about-us/events/patents-docx-filing](http://www.uspto.gov/about-us/events/patents-docx-filing).

The items in this information collection relate solely to the impacts of the 37 CFR 1.16(u) non-DOCX filing surcharge fee on the filing of nonprovisional utility applications under 35 U.S.C. 111, including continuing applications. In particular, this information collection accounts for the 37 CFR 1.16(u) non-DOCX filing surcharge fee itself, as well as an additional 30 minutes of time to accommodate (i) extra review that some respondents might undertake when filing in the DOCX format and (ii) submissions of the back-up applicant-generated PDF that some respondents will opt to submit.

The estimated volumes for the items in this information collection are based on the estimates for the corresponding nonprovisional utility applications filed under 35 U.S.C. 111, including continuing applications, that are covered under the existing OMB clearance 0651-0032 (Initial Patent Applications). Respondents for the items in this information collection will either take an extra 0.50 hours (30 minutes) to file their applications in DOCX format or they will pay the non-DOCX surcharge. They will not do both.

## **II. Method of Collection**

DOCX submission of the applications in this collection must be undertaken electronically through the USPTO patent electronic filing system (Patent Center), the USPTO's online filing and viewing system for patent applications and related documents. For those respondents who choose to not file the applications in this collection in the DOCX format and pay the non-DOCX filing surcharge fee, the applications and fee may be submitted electronically by Patent Center, mail, or hand delivery.

## **III. Data**

*OMB Control Number:* 0651-0089.

*Forms:* None.

*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:* 364,999 respondents (including 27,156 respondents from filing fees).

*Estimated Number of Annual Responses:* 364,999 responses (including 27,156 responses from filing fees).

*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 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:* 168,922 hours.

*Estimated Total Annual Respondent Hourly Cost Burden:* \$75,508,134.

**Table 1: Total Reporting 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>3</sup> (\$/hour)<br>(f) | Estimated Annual Respondent Cost Burden<br>(e) x (f) = (g) |
|----------|--|-------------------------------------|---------------------------------|--|--|--|------------------------------------|--|
| 1        | DOCX submission of Noncontinuing, Nonprovisional Utility Applications      | 198,077                             | 1                               | 198,077  | 0.50<br>(30 minutes)                       | 99,039   | \$447                              | \$44,270,433   |
| 2        | DOCX submission of Continuation/Divisional of an International Application | 24,066                              | 1                               | 24,066   | 0.50<br>(30 minutes)                       | 12,033   | \$447                              | \$5,378,751  |
| 3        | DOCX submission of Utility   | 105,518                             | 1                               | 105,518  | 0.50<br>(30 minutes)                       | 52,759   | \$447                              | \$23,583,273   |

<sup>3</sup> 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 ([www.aipla.org/home/news-publications/economic-survey](http://www.aipla.org/home/news-publications/economic-survey)).

| 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>3</sup> (\$/hour)<br>(f) | Estimated Annual Respondent Cost Burden<br>(e) x (f) = (g) |
|----------|--|-------------------------------------|---------------------------------|--|--|--|------------------------------------|--|
|          | Continuation/Divisional Applications                         |                                     |                                 |  |  |  |                                    |  |
| 4        | DOCX submission of Utility Continuation-in-Part Applications | 10,182                              | 1                               | 10,182   | 0.50<br>(30 minutes)                       | 5,091  | \$447                              | \$2,275,677  |
|          | <b>Totals</b>  | <b>337,843</b>                      | <b>---</b>                      | <b>337,843</b>                                   | <b>---</b>                                 | <b>168,922</b>                                     | <b>---</b>                         | <b>\$75,508,134</b>  |

*Estimated Total Annual Respondent Non-hourly Cost Burden:* \$8,472,290. There are no capital start-up costs, maintenance costs, recordkeeping costs, or postage 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, is \$8,472,290.

#### Filing Fees

The fees for this information collection are listed in Table 2 below.

**Table 2: Filing Fees**

| Item No. | Fee Code | Item  | Estimated Annual Responses<br>(a) | Filing Fee (\$)<br>(b) | Non-hourly Cost Burden<br>(a) x (b) = (c) |
|----------|----------|---|-----------------------------------|------------------------|---|
| 1-4      | 1054     | Non-DOCX Filing Surcharge Fee (undiscounted entity) | 15,167                            | \$430                  | \$6,521,810                               |
| 1-4      | 2054     | Non-DOCX Filing Surcharge Fee (small entity)        | 10,691                            | \$172                  | \$1,838,852                               |
| 1-4      | 3054     | Non-DOCX Filing Surcharge Fee (micro entity)        | 1,298                             | \$86                   | \$111,628                                 |
|          |          | <b>Totals</b>                                       | <b>27,156</b>                     | <b>---</b>             | <b>\$8,472,290</b>                        |

#### Postage Costs

There are no direct postage costs associated with this information collection. The actual submission of patent applications, and any postage cost burden, is covered by OMB control number 0651-0032 (Initial Patent Applications).

#### **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 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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