

March 22, 2010

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RE: *Appeal on IQA Error Correction Request Ticket Number 1-17895016*

This Request For Reconsideration (“RFR”) is an appeal submitted to the U.S. Patent and Trademark Office (“PTO”) in response to its refusal to correct certain information that the PTO disseminated, to which I requested correction under the Information Quality Act (“IQA”) in my Request For Correction (“RFC”) dated November 23, 2010.¹ This RFR is submitted in accordance with the procedures set forth in the PTO’s Information Quality Guidelines.² Section XI.A.5 of the Guidelines governs the contents of the submission of RFCs and RFRs. For the PTO’s convenience, I reiterate the requested identification information as follows:

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The “citation to and a description of the particular information disseminated that is the subject of the request for correction” is found in my RFC. The documents that are the subject of the RFC are the PTO’s Federal Register announcement seeking public comment on its draft burden statement for ICR 0651-0032 (“ICR 60-day Notice”),³ and the Supporting Statement the PTO submitted to OMB purportedly justifying the information collection and documenting the Office’s burden estimates (“ICR-SS”).⁴ Copies of the RFC and PTO’s reply⁵ are attached.

This RFR consists of an appeal of several aspects of the PTO’s reply. In accordance with applicable procedures, my RFR does not raise any new error claims except insofar as they originate in the PTO’s reply. The RFR consists of two main sections. Section 1 lists errors I

¹ Ron D. Katznelson, Letter to Data-Quality, PTO: *Request for Correction under the Information Quality Act* (November 23, 2010). (Hereinafter, "RFC".)

² PTO, *Information Quality Guidelines* (2002), at <http://www.uspto.gov/products/cis/infoqualityguide.jsp>.

³ PTO, *Initial Patent Applications; Proposed collection; comment request*, 75 *Fed. Reg.* 23227 (May 3, 2010) (Hereinafter, "ICR 0651-0032 60-Day Notice".)

⁴ PTO, *Supporting Statement; United States Patent and Trademark Office; Initial Patent Applications; OMB Control No. 0651-0032; September 2010* (2010).

⁵ PTO, Letter from Raul Tamayo to Ron D. Katznelson, *Re: Request for Correction (Ticket No. 1-17895016)* (January 21, 2011). (Hereinafter, "PTO Reply to RFC".)

identified in my RFC but to which the PTO did not respond. Section 2 concerns elements of the PTO's response which are contrary to law and applicable guidelines, or which are the source of new error.

Government-wide guidelines issued by the Office of Management and Budget ("OMB") prescribe certain aspects of the process the PTO must use to respond to this RFR. In particular, PTO must "establish an administrative appeal process to review the agency's initial decision."⁶ This must be an "objective administrative appeal process that, upon further complaint by the affected person, reviews an agency's decision to disagree with the correction request."⁷ OMB is clear that objectivity is essential in the appeal process, for "[a]n objective process will ensure that the office that originally disseminates the information does not have responsibility for both the initial response and resolution of a disagreement."⁸

The PTO's Information Quality Guidelines do not disclose anything about the process the Patent Office will use to review and respond to appeals.⁹ The Guidelines say only that "[t]he *designated person* at the next highest organizational level will notify the appeal requester... of the appeal decision within 60 calendar days."¹⁰ The identity of the "designated person" is not specified, nor is it clear which PTO official is authorized for choosing the "designated person." I infer from the Guidelines that this authority is not vested in the Chief Information Officer, as the text indicates that the CIO's responsibilities are limited to administrative rather than substantive matters.¹¹

Therefore, I formally request that the Director of the PTO affirmatively take responsibility selecting the "designated person" responsible for reviewing and responding to this RFR. In addition, I formally request that the Chief Information Officer of the Department of Commerce, the Patent Office's parent, consult with the Director to ensure broad agreement that the person designated by the Director has the requisite independence, capacity for objectivity, legal and statistical competence, and authority to respond.¹²

⁶ Office of Management and Budget, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies*; Notice; Republication, 67 Fed. Reg. 8452, 8459 (February 22, 2002). (Hereinafter, "OMB Information Quality Guidelines".)

⁷ OMB Information Quality Guidelines, p. 8458.

⁸ OMB Information Quality Guidelines, p. 8458.

⁹ A review of the Commerce Department's annual information quality reports suggests that the PTO has never received an RFR. See http://ocio.os.doc.gov/ITPolicyandPrograms/Information_Quality/PROD01_002276. Thus, there appears to be no precedent for how the PTO will manage this RFR.

¹⁰ PTO Information Quality Guidelines, Section XI.A.11.d, emphasis added.

¹¹ PTO Information Quality Guidelines, Section X. "The Chief Information Officer of the USPTO will be responsible for the administrative mechanisms to track complaints, appeals, resolutions; and on a fiscal-year basis, submit a report to the Director of OMB providing information (both quantitative and qualitative, where appropriate) on the number and nature of complaints received by the agency regarding agency compliance with the OMB information quality guidelines and how such complaints were resolved."

¹² The Department of Commerce's Information Quality Guidelines take the reasonable position that "a distributed approach" to preparing and complying with information quality guidelines is appropriate given "the diversity of Commerce's mission." See U.S. Department of Commerce, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Disseminated Information* (2002), at

Because of my familiarity with PTO procedures and practices, I respectfully advise the Director to first familiarize himself with the actual procedures the Patent Office followed to reply to my RFC, to ensure that he designates an appropriate person “at the next highest organizational level.” The reply to my RFC was prepared within the Office of Patent Legal Administration (“OPLA”). The “next highest organizational level” is the Office of Patent Examination Policy (“OPEP”), the office to which OPLA is subordinate. However, OPEP would not qualify as “the next highest organizational level” if it played any material role in responding to my RFC, which seems entirely plausible. If so, then OPEP does not qualify as “the next highest organizational level,” in which case the Designated Person must be the Commissioner for Patents.¹³

1. ERROR CORRECTION REQUESTS IN THE RFC TO WHICH THE PTO HAS NOT RESPONDED

The Information Quality Act directed OMB to issue regulations or guidelines requiring each covered agency to “ensur[e] and maximiz[e] the quality, objectivity, utility, and integrity of information (including statistical information) disseminated.” Each agency’s guidelines must “establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the guidelines.”¹⁴ Affected persons seeking the correction of error cannot possibly “seek and obtain” correction if an agency refuses to respond. For each of the following error correction requests in my RFC, the PTO has in fact failed to respond.

1.1 Biased total burden estimates

In my RFC, I reiterated comments I provided on the 60-day notice¹⁵ and in prior comments made on the Appeal Rules about the flawed method of calculating *total* burden, but which the PTO ignored in all its ICRs, the ICR-SS and in its Reply to my RFC. *See* RFC at 1 and 11. Invoking OMB regulations implementing the Paperwork Reduction Act (“PRA”), I explained in the RFC that the PTO’s statutory responsibility under the PRA is to provide an objectively supported “estimate of the *total* annual reporting and recordkeeping burden that will result from the collection of information.” 5 C.F.R. § 1320.5(a)(1)(iv)(B)(5) (emphasis added). In its reply, the PTO appears to have carefully danced around this regulation, failing to acknowledge its existence and failing to provide objectively based estimates for the total burden estimates in Table 3. Moreover, the PTO did not respond to my request that it “provide a reasoned, *statistically valid* defense” for using its biased method (median rather than average burden multiplied by the number of responses) for estimating the total burden.¹⁶ No statistically valid explanation was provided. Information that does not meet the requirements of the PRA for objectively based estimates of total burden cannot be compliant with the IQA, which requires

http://ocio.os.doc.gov/ITPolicyandPrograms/Information_Quality/DEV01_002680 . (Hereinafter, “DOC Information Quality Guidelines”).

¹³ The PTO’s organization chart clearly places the Offices of Patent Examination, Patent Examination Policy, and Patent Resources and Planning at the same level underneath the Office of the Commissioner. *See* USPTO, *Mission and Organization of the USPTO* (FY 2010), http://www.uspto.gov/about/stratplan/ar/2010/mda_01.html.

¹⁴ 44 U.S.C. § 3516 note.

¹⁵ Katznelson Comment on ICR 0651-0032 60-Day Notice.

¹⁶ RFC at 11.

information to have utility for its intended purpose (i.e., complying with the PRA) and be objective (i.e., “accurate, reliable, and unbiased,” and “presented in an accurate, clear, complete, and unbiased manner ... within a proper context”).

1.2 Small entity burdens are shown as zero

Upon uploading the ICR-SS to OMB’s web site, the PTO’s burden estimates also take the form shown in the Attachment of the RFC. At least three items from the ICR-SS show a zero entry for small entity burden. I pointed out this obvious error on page 8 of the RFC, but the PTO has neither addressed it nor agreed to correct it.

2. ERROR CORRECTION REQUESTS IN THE PETITION TO WHICH THE PTO HAS RESPONDED

Solely for the convenience of the Designated Person reviewing and responding to this RFR, I use the identical headings contained in the PTO’s response to my RFC.¹⁷

2.1 “ICR tables and Supporting Statement do not contain sources, derivation methods, time periods, or objective bases for estimates”

In my RFC, I established that the ICR and ICR-SS contain influential information subject to OMB’s and PTO’s Information Quality Guidelines. I also pointed out that OMB’s information quality standards derive from the Paperwork Reduction Act (“PRA”), and therefore ICRs and their Supporting Statements are clearly within the scope of the IQA’s coverage.¹⁸ About this there should be no dispute; the PTO submitted to OMB a copy of its Information Quality Guidelines as a supporting reference to its ICR submission.¹⁹ There would be no point in doing this if the information contained in the ICR-SS were exempt. The PTO also included a statement in the text of the ICR-SS that, as the PTO’s reply acknowledges, was intended to make clear that its contents were covered by the IQA and that they complied in fact with the PTO’s Information Quality Guidelines.²⁰

In my RFC I also established that the information contained in the ICR and ICR-SS must be transparent and reproducible in order to comply with applicable information quality standards. However, the information contained therein does not in fact comply. Indeed, “No third party (including OMB) can reproduce the PTO’s estimates of the number of responses, burden-hours

¹⁷ See PTO Reply to RFC. This is not an acknowledgement of the headings’ accuracy in characterizing my RFC. Rather, it is simply to enable ready comparison to the PTO’s reply and this RFR.

¹⁸ RFC, pp. 2-4.

¹⁹ In its response to my RFC, the PTO does not dispute my contention that the information in question is “influential.” Rather, the PTO attempts to deny that *estimates* are within the definition of “information.” This view appears to be held by no other agency, or by OMB, and it is inconsistent with the underlying statute, which specifically mentions statistical (i.e., *estimated*) information. I address this in Section 2.5 below. The PTO’s position also is contradicted by its response to my RFC, as I show in Section 2.2 below.

²⁰ See OMB’s record for ICR Reference No. 201009-0651-002 at http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201009-0651-002, September 2010 PTO Supporting Statement for ICR 0651-0032, p. 3. See also Section 2.2 below.

per response, or non-hour burdens.”²¹ OMB’s government-wide Information Quality Guidelines are crystal clear: transparency and reproducibility are essential information quality standards, and the PTO must comply with them:

If an agency is responsible for disseminating influential scientific, financial, or statistical information, agency guidelines shall include a high degree of transparency about data and methods to facilitate the reproducibility of such information by qualified third parties ²² (emphasis added).

I am a highly qualified third party, with extensive experience as both an inventor and a scholar of the patent system. I am unable to reproduce the PTO’s estimates.

The PTO’s own guidelines commit the Office to adhere to OMB’s standards for transparency and reproducibility:

Where appropriate, supporting data shall have *full, accurate, transparent documentation*, and error sources affecting data quality shall be identified and *disclosed* to users.²³

According to OMB, transparency and reproducibility are appropriate except in limited circumstances it describes as involving “other compelling interests such as privacy, trade secrets, intellectual property, and other confidentiality protections.”²⁴ None of these conditions apply here. Moreover, they could not conceivably apply to information that by law the PTO is required to prepare and disclose for public review and comment. The PRA specifically directs agencies to prepare—and seek public comment on—“specific, objectively supported estimate[s] of burden.”²⁵ It also requires the agency to *provide* a record of such supporting material.²⁶

In its reply, the PTO refuses to make transparent and reproducible its estimates of the numbers of respondents and the burdens borne by respondents in ICR 0651-0032. The PTO lists sources that apparently were consulted, but provides no way a qualified third party could reproduce the Patent Office’s results:

The estimates provided in the Supporting Statement for 0651-0032 are arrived at from a combination of factors, including: internal data collected from the Patent Application Location Monitoring (PALM) and/or Image File Wrapper (IFW) systems; data from the biennial American Intellectual Property Law Association (AIPLA) economic survey report; data from previous iterations of the renewal process; and agency expertise in patent prosecution practice.²⁷

This is an implicit acknowledgement that the ICR and ICR-SS do not comply with applicable information quality guidelines. To satisfy the standard of reproducibility, information must be “capable of being substantially reproduced, subject to an acceptable degree of imprecision.” The disclosure standard is even greater for information such as the burden estimates in the ICR and ICR-SS:

²¹ RFC, p. 4.

²² OMB Information Quality Guidelines, p. 8460.

²³ PTO Information Quality Guidelines, Section IV.6.a., emphasis added.

²⁴ OMB Information Quality Guidelines, p. 8460.

²⁵ 44 U.S.C. § 3506(c)(1)(a)(iv).

²⁶ 5 C.F.R. § 1320.9.

²⁷ PTO Reply to RFC, p. 1.

With respect to analytic results, “capable of being substantially reproduced” means that independent analysis of the original or supporting data using identical methods would generate similar analytic results, subject to an acceptable degree of imprecision or error.²⁸

The PTO’s burden estimates are “analytic results.” The PTO is obligated to show how it derived them, with enough precision and specificity that a qualified third party could reproduce them. Instead of complying with this unambiguous directive, however, in its reply to my RFC the PTO admits that it relies on the unverified (and unverifiable) expertise of its own staff:

To the extent that the USPTO utilizes staff expertise in crafting estimates, the Office of Patent Legal Administration (OPLA) on its own has over 50 years of non-USPTO patent prosecution experience, and OPLA is but one of the offices involved in providing materials contained in the Supporting Statement.²⁹

The crucial IQA issue, however, is not whether the PTO staff has patent prosecution experience, but the Patent Office’s apparent unwillingness to show its work. Applicable information quality guidelines do not exempt even the most expert government agencies from their statutory duty to disclose this information. Transparency is a core requirement that agencies must fulfill to give qualified third parties the capacity to reproduce their work.

Similarly, with regard to the PTO’s estimates of the average and aggregate burden-hours required to complete each information collection element, the PTO’s response to my RFC provides no transparent and reproducible documentation:

Estimates of the hours per response for items in the collection are derived from data from the biennial AIPLA economic survey report, data from previous iterations of the renewal process, and agency expertise in patent prosecution practice.³⁰

This expertise also is irrelevant. The problem is the PTO’s lack of disclosure. For example, how was the figure of 33 hours and 12 minutes obtained for the burden of preparing a patent application? Reproducibly is required to permit qualified third parties such as myself to validate the information disseminated by the PTO with “an acceptable degree of imprecision or error.”³¹

In sum, the PTO’s response to my specific request for transparency and reproducibility in the production of burden estimates is inherently nonresponsive. It is reasonably interpreted as a rejection of the Office’s explicit and self-acknowledged responsibilities under the Information Quality Act. Therefore, I formally request that the Designated Person reviewing and responding to this RFR recognize that OPLA’s position is legally untenable, and to direct it to cease hiding behind this opaque fog of ambiguity and show its work. It must exist, and disclosure should be simple and inexpensive, for the PTO could not otherwise have reported what it did disclose.

²⁸ OMB Information Quality Guidelines, p. 8460.

²⁹ PTO Reply to RFC, pp. 1-2.

³⁰ PTO Reply to RFC, p. 1. In Section 2.5.6 below, I respond to the PTO’s claim that it is not responsible for the quality of third-party information on which it relies and disseminates, such as data from the AIPLA economic surveys.

³¹ The PRA requires burden estimates to be objectively supported. See 44 U.S.C. § 3506(c)(1)(A)(iv). Internal PTO expertise might meet this test, but unless the PTO fully discloses its data and methods, it is contrary to OMB’s Information Quality Guidelines to infer that they are.

2.2 “Circular Statement in Needs and Uses (Issue 1)”

My RFC highlighted an error of circularity in the text of the ICR-SS with respect to the applicability of the Information Quality Act and its implementing guidelines issued by OMB and the PTO.³² In short, the text says that the Guidelines comply with the Guidelines:

The Information Quality Guidelines from Section 515 of Public Law 106-554, Treasury and General Government Appropriations Act for Fiscal Year 2001, apply to this information collection and comply with all applicable information quality guidelines, *i.e.*, the OMB and specific operating unit guidelines.³³

In other words, the PTO’s Information Quality Guidelines comply with themselves.

The PTO’s reply recognizes the logical error but refuses to correct it on the ground that OMB’s approval of the ICR rendered the question moot.³⁴ Both the premise and the conclusion are false. The PTO had 56 calendar days between the date I submitted my RFC (November 23, 2010) and OMB’s approval (January 18, 2011) to make this simplest of corrections to the Supporting Statement. The task would have required perhaps five minutes to complete; the PTO has spent far more time than that trying to avoid making the correction.

A review of PTO’s other ICRs shows that the Patent Office has made this same error in every previously approved Supporting Statement currently in force.³⁵ Apparently, the pre-dissemination review that is required under the PTO’s guidelines has missed this error each time.³⁶ Or perhaps the PTO is not actually conducting any pre-dissemination review, despite claims that it does so in its “normal process”.³⁷ Astonishingly, the same error can be found in two Supporting Statements that the PTO published *after* the date of the PTO’s reply to my RFC.³⁸ Each of the PTO’s six listed pre-dissemination review technologies has failed.³⁹

³² RFC, p. 2.

³³ September 2010 PTO Supporting Statement for ICR 0651-0032, p. 3.

³⁴ PTO Reply to RFC, p. 2.

³⁵ These ICRs are listed as References 14-23, 25-36, and 39-51 at the end.

³⁶ PTO Information Quality Guidelines, Section V. "Information quality is an integral part of the pre-dissemination review of information disseminated by the USPTO. Information quality is also integral to information collections conducted by the USPTO, and is incorporated into the clearance process required by the PRA (44 U.S.C. Chapter 35) (PRA) to help improve the quality of information that the USPTO collects and disseminates to the public."

³⁷ PTO Information Quality Guidelines, Section VII.A. "Historically, a pre-dissemination review process of all USPTO information disseminated is incorporated into the normal process of formulating the information."

³⁸ USPTO, *Supporting Statement: United States Patent and Trademark Office; Third-Party Submissions and Protests; formerly Green Technology Pilot Program*; OMB Control Number 0651-0062 (January 2011) (2011), at <http://www.reginfo.gov/public/do/DownloadDocument?documentID=224864&version=0>., currently under review; USPTO, *Supporting Statement: United States Patent and Trademark Office; United States Patent Applicant Survey*; OMB Control No. 0651-0052; *Modified Submission (January 2011)* (2011), at <http://www.reginfo.gov/public/do/DownloadDocument?documentID=207030&version=2>., approved February 8, 2011.

³⁹ These technologies are listed in the PTO’s Information Quality Guidelines:

Pre-dissemination review can be accomplished in a number of ways (including but not limited to combinations of the following): a. Active personal review of information by supervisors and managers,

By refusing to make even this seemingly minor correction, the PTO's reply proves that the Patent Office's process for error correction has failed utterly. It is difficult to credit the PTO with good faith when it refuses to correct even the simplest textual errors—errors that it admits to and even persists in perpetuating. The PTO perpetuates the error even after it asserted mootness of this issue. When a federal agency asserts mootness of a proffered request, it is “only because” the agency ceases all “offending conduct” by accepting the request. *Adarand Constructors Inc. v. Slater*, 528 U.S. 216, 221–22 (2000); *Byrd v. U.S. Environmental Protection Agency*, 174 F.3d 239, 244–45 (D.C. Cir. 1999) (an issue is moot only when the agency takes steps to ensure that the policy and practice complained of will stop *permanently*). By the reasoning that the PTO itself gave, the PTO assumed a “heavy burden” of reforming itself to comply with the law, a burden it continues to evade.

2.3 “Burden Components Missing from USPTO's Estimates (Issue 2)”

In my RFC, I identified major, systematic discrepancies in the ICR and ICR-SS between the information collection components for which the PTO sought approval and its burden estimates. The PTO's reply is unresponsive to every one of my error correction requests.

2.3.1 “All of the forms in Table 2 do not have burden estimate (Issue 2.1)”

In my RFC, I noted that the itemized burden estimates in Table 3 (“Burden Hour/Burden Cost to Respondents”) do not cover all of the information collections listed in Table 2 (“Needs and Uses of Information Collected to Determine Patentability”) but intended to be covered by the ICR. I provided as an illustrative example the Multiple Dependent Claim Fee Calculation Sheet Form PTO/SB/07. The PTO estimated 9,840 applications per year would be filed with Multiple Dependent Claims fees (the non-burden hour costs of which are reported in Table 5), but nowhere in the ICR-SS is there any estimate of the burden associated with filing a single Form PTO/SB/07, much less 9,840 of them.

In its response, the PTO says that information collection elements contained in Table 2 but not clearly specified in Table 3 are nonetheless buried somewhere in the burden estimates in Table 3.⁴⁰ The PTO's reply is, however, problematic because the Office *defends* Table 3's opacity instead of remedying it:

Although Table 3 does not track exactly to the items listed in Table 2, the Supporting Statement does contain the estimated number of applicant responses for each piece of information collected.⁴¹

either by reviewing each individual document, or selected samples, or by any other reasonable method. b. Use of quality check lists, charts, statistics, or other means of tracking quality, completeness, and usefulness. c. Process design and monitoring to ensure that the process itself imposes checks on information quality. d. Review during information preparation. e. Use of management controls. f. Any other method that serves to enhance the accuracy, reliability, and objectivity of the information.

See PTO Information Quality Guidelines, Section VIII.

⁴⁰ PTO Reply to RFC, p. 3. “The USPTO exercised a third option which you failed to consider: the burden is contained in the various estimations throughout the Supporting Statement.” The PTO is not correct: I did consider the possibility that the PTO was playing “hide the peanut,” but I considered it inappropriate to accuse it of such puerile gamesmanship. I regret the error.

⁴¹ PTO Reply to RFC, p. 3.

I accept the PTO's statement that "what's there is there" as a tacit admission that there is much that should be there and isn't, that the "estimated burdens to complete each of these forms, including gathering information, preparing, and submitting the forms to the PTO are nowhere to be found in the ICR-SS," and that "such burdens are not included in the tabulation of 'The Burden Hour/Burden Cost to Respondents' in Table 3."⁴²

Table 3 is so lacking in transparency that qualified third parties cannot reproduce the Patent Office's burden estimates. The legally appropriate response is to correct the error, not attempt to defend it post hoc.

Worse, the PTO's attempted defense exemplifies an apparent lack of commitment to minimal compliance with the substance of its Information Quality Guidelines. Having conceded that its burden estimates lack transparency and reproducibility, the PTO doubles down, saying that "the presentation of burden estimations and numbers of responses are 'objective' within the meaning of the IQG and no correction is warranted."⁴³ No logical argument is presumably given because none could be made. The purpose of transparency is to enable reproducibility;⁴⁴ the purpose of reproducibility is to enable qualified third parties to test agency claims of objectivity.⁴⁵ To merely assert that its burden estimates are "objective" while refusing to make them transparent and reproducible leads inevitably to the conclusion that the PTO knows its burden estimates cannot meet the objectivity standard and is determined to suppress this information.

Transparency and reproducibility are non-negotiable elements of both OMB's and the PTO's information quality guidelines. They are essential for qualified third parties such as me to validate the PTO's various calculations and estimates. Therefore, I respectfully request that the Designated Person reviewing and responding to this RFR direct the relevant PTO personnel to fully and completely show their work. The IQA requires that Tables 2 and 3 be revised so that there is a transparent and reproducible mapping of PTO forms and burden estimates.

2.3.2 *"Nothing in the Supporting Statement gives the burden estimate for the small entity status paperwork (Issue 2.2)"*

In my RFC, I noted that the PTO requires applicants wishing to claim small entity status to provide sufficient evidence of qualification, and that there is a substantial penalty for false claims, including the finding of inequitable conduct which could result in the loss of all patent rights. Nonetheless, the PTO does not account for this burden.⁴⁶

In its reply to my RFC, the PTO is so unresponsive that an uninformed reader would not understand the nature of my complaint:

⁴² RFC, p. 5.

⁴³ PTO Reply to RFC, p. 3.

⁴⁴ OMB Information Quality Guidelines, p. 8460. "Making the data and methods publicly available will assist in determining whether analytic results are reproducible."

⁴⁵ OMB Information Quality Guidelines, p. 8455. "The reproducibility standard applicable to influential scientific, financial, or statistical information is intended to ensure that information disseminated by agencies is sufficiently transparent in terms of data and methods of analysis that it would be feasible for a replication to be conducted."

⁴⁶ RFC, pp. 5-6.

[A]n entity wishing to pay a reduced fee must identify itself as a small entity in each particular filing for which the fee reduction is claimed. The Supporting Statement does contain burden estimates for the total amount of time the USPTO estimates it will take an applicant to complete each filing. The USPTO's estimates do not itemize the amount of time it will take an applicant to complete each box or question on any particular form. Thus, the amount of time an applicant spends determining small entity status is already included in the burden estimation, albeit not specifically delineated, as you request.⁴⁷

In short, it is the PTO's view that the incremental burden of proving eligibility for small entity fee discounts is captured somewhere in its burden estimates, but the Patent Office does not have any obligation to reveal exactly where, and how much these burdens are.

This highlights a larger problem. The PTO's burden estimation methodology, which the Office has refused to disclose, does not appear to take into account the size of the entity. Instead, the PTO assumes that all patent applicants are functionally and practically indistinguishable except that some are eligible for small entity fee discounts but the rest are not.

This view conflicts with the PRA and the PTO's own Supporting Statement. OMB's regulations implementing the PRA require the PTO to "reduce[] to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, *including with respect to small entities*, as defined in the Regulatory Flexibility Act (5 U.S.C. 601(6))."⁴⁸ Moreover, the Director or designated Senior Official "shall certify (and provide a record supporting such certification)" that he has performed this task.⁴⁹

This responsibility is known to the PTO but apparently ignored. In lieu of providing a certification with a record supporting it, the PTO simply asserts the conclusion it would like to reach but cannot in fact certify because it lacks a supporting record. So the PTO only *pretends* to make the certification required by law:

No significant impact is placed on small entities, as the rule (37 CFR 1.27) simply requires a small entity to identify itself as such to obtain the benefits of small entity status.⁵⁰

In fact, the ICR-SS does not actually contain any of the certifications required by the PRA and OMB's Information Collection Rule.⁵¹ In my RFC, I specifically asked the PTO to disclose the statutorily required record. The PTO's reply strongly suggests that no such record exists.

I respectfully request that the Designated Person reviewing this RFR produce the statutorily required record in support of its required certification of no significant impact on small entities, or in the alternative, acknowledge that no such record exists. If there is no such record, I respectfully request that the PTO immediately reopen this ICR, actually analyze whether small entities face disproportionate burdens, and re-evaluate its information collection requirements in accordance with applicable law.

⁴⁷ PTO Reply to RFC, pp. 3-4.

⁴⁸ 5 C.F.R. § 1320.9(c), emphasis added.

⁴⁹ 5 C.F.R. § 1320.9.

⁵⁰ September 2010 PTO Supporting Statement for ICR 0651-0032, p. 10.

⁵¹ A recitation of fee discounts required by law to be provided to small entities is not a substitute for compliance with the PRA.

2.3.3 “*The Supporting Statement only includes estimates of attorney time and excludes inventor time in its burden estimates (Issue 2.3)*”

In my RFC, I noted that the ICR and ICR-SS make the counterfactual assumption that all burdens are borne by patent counsel and no burdens at all are borne by inventors:

The PTO ignores the time and effort required by inventors to assemble information in a manner amenable to use by their patent attorneys, and the time it takes inventors to respond to inquiries their attorneys inevitably make to clarify and elaborate this information. The ICR-SS also ignores the time it takes for inventors to review the final application and claims prior to filing, as required by law.⁵²

The PTO’s response implicitly acknowledges this error:

The USPTO does not currently account for the amount of time inventors spend assembling information for and responding to questions from their patent attorneys.⁵³

I appreciate the candor of this admission, but wish to point out that the statutory definition of burden is unambiguous on this point: *all* burdens imposed on respondents must be included in the PTO’s estimates:

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency, including:

- (i) Reviewing instructions;
- (ii) Developing, acquiring, installing, and utilizing technology and systems for the purpose of collecting, validating, and verifying information;
- (iii) Developing, acquiring, installing, and utilizing technology and systems for the purpose of processing and maintaining information;
- (iv) Developing, acquiring, installing, and utilizing technology and systems for the purpose of disclosing and providing information;
- (v) Adjusting the existing ways to comply with any previously applicable instructions and requirements;
- (vi) Training personnel to be able to respond to a collection of information;
- (vii) Searching data sources;
- (viii) Completing and reviewing the collection of information; and
- (ix) Transmitting, or otherwise disclosing the information.⁵⁴

Nothing in the law or OMB’s Information Collection Rule permits the PTO to exclude those burdens it wishes to ignore or finds inconvenient to estimate.

The PTO’s reply says that its burden estimates “are likely overstated” because many applications are filed *pro se*, which the Office asserts entails lower costs, and therefore, “On balance, the failure to include inventor time spent with counsel is therefore negligible to the overall burden estimates.” No analytical support is offered for either this conclusion or its logic. Were it true that self-application is less costly, a much larger proportion of patent applications

⁵² RFC, p. 6.

⁵³ PTO Reply to RFC, p. 4.

⁵⁴ 5 C.F.R. 1320.3(b)(1), interpreting 44 U.S.C. § 3502(2).

would be filed *pro se*—in particular, even by applicants who can readily afford counsel—for under the PTO’s reasoning they would save money. Further, the PTO presents no data showing that the actual cost of *pro se* filing is systematically lower than the cost of counsel, and no data showing that this cost is lower for applications of equal quality.

More to the point, the issue raised in my RFC is unrelated to the decision whether to file an application *pro se*. Hiring counsel does not eliminate the applicant’s burden any more than hiring an accountant to file one’s taxes reduces to zero a taxpayer’s paperwork burden-hours. Indeed, the Internal Revenue Service freely acknowledges that a taxpayer’s paperwork burden does not vanish simply by hiring an accountant.⁵⁵

The IRS Income Tax Burden Study estimated that average taxpayer burden in tax year 2000 was \$149 in non-burden hour costs *plus 25.5 hours*. And these burdens are not symmetrically distributed: taxpayers who self-prepared (akin to filing patent applications *pro se*) spent an average of 18.2 hours, whereas taxpayers who hired paid preparers (akin to hiring patent counsel) experienced an average of 26.1 burden-hours — 43% more.⁵⁶ We do not know the difference in burdens because the PTO has not endeavored to estimate it, but we do know that applicant burden is never zero, which is what the PTO counterfactually assumes.

What sets the PTO apart from the IRS is the IRS recognizes that taxpayers who hire paid preparers also bear cognizable paperwork burden, and the PTO does not. The PTO has chosen to be willfully blind. Its conduct is misleading, pernicious, and illegal.⁵⁷

I respectfully request that the Designated Person reviewing and responding to this RFR recognize that the PTO’s past and current practices have been and continue to be substandard, and direct that the Patent Office adopt the approach pioneered by the IRS to prepare objectively-based burden estimates. The IRS’ experience and practice is obviously analogous. The PTO has

⁵⁵ John L. Guyton, et al., *Estimating the Compliance Cost of the U.S. Individual Income Tax* (2003), at <http://www.irs.gov/pub/irs-soi/toder.pdf>. (Hereinafter, "IRS Income Tax Burden Study".) The IRS’ Individual Taxpayer Burden Model (TCBM) is specifically designed to enable the IRS to estimate burdens at the taxpayer level, not just for individual the distribution of burden (or changes in burden) across different subgroups of taxpayers. It also permits the IRS to estimate the effects of proposed changes in tax policy. The PTO would greatly benefit from using a similar methodology to estimate the paperwork burdens of patent application and patent processing (ICR 0651-0031).

Quite likely, the taxpayer’s burden-hours decline by a much greater proportion by hiring an accountant than the patent applicant’s burden-hours decline by hiring patent counsel. The tax code and patent law are both highly complex, but IRS personnel have severely constrained interpretive discretion and, unlike patent examiners, cannot make up *ad hoc* examination procedures in contravention of rule and guidance. Unlike patent counsels, who often discuss applications with patent examiners to reach common ground, accountants do not need to consult IRS staff except under extraordinary circumstances.

⁵⁶ IRS Income Tax Burden Study, Table 4. These estimates are derived from a data-rich microsimulation model, something that the PTO also is capable of doing. It was specifically designed to comply with the PRA and OMB’s burden measurement guidelines.

⁵⁷ The IRS recognizes that accurate burden estimates are essential for the agency’s mission. See IRS Income Tax Burden Study.: “An estimate of the dollar cost of compliance burden that includes both out-of-pocket costs and a monetized value of taxpayer time is essential to support decisions that affect tradeoffs among three outcomes of IRS activities - IRS budgetary costs, tax revenue (through both direct enforcement yield and voluntary compliance rates), and taxpayer burden.” There are obvious analogues to patent application and prosecution. In contrast, the PTO to date has shown no interest in seriously taking account of any costs other than those borne by the Office.

a wealth of data that could be used to build a microsimulation model, though unlike the IRS it apparently has never performed a statistically valid survey asking applicants to report their actual burdens. The PTO's practice is a quick-and-dirty substitute (i.e., crib from the biennial AIPLA economic survey) that is undoubtedly convenient but lacking any of the statistical properties necessary to make it credible.⁵⁸

2.3.4 “*The Supporting Statement does not consider the burden of prior art searches (Issue 2.4)*”

In my RFC, I noted that the ICR and ICR-SS do not account for the burden and non-burden hours associated with prior art searches related to the preparation of a patent application:

The ICR-SS does not count the actual patentability search burdens that applicants (or their retained search services) perform as part of their initial patent application process, although the PTO is fully aware of these search results via applicants' submission of Information Disclosure Statements (“IDSs”) that are often filed with the initial application.⁵⁹

I pointed out that in ICR 0651-0031 the PTO estimates the average IDS prepared subsequent to application requires just two hours to prepare, “a trivial portion of the true burden,” and in this ICR the Patent Office ignores the burden entirely.

In its reply to my RFC, the PTO acknowledges that the ICR and ICR-SS do not include the burden of prior art searches. But the reply also asserts that they are exempt from burden estimation under the PRA *because prior art searches are not required by law*.⁶⁰ This is an incorrect reading of the plain text of both the law and OMB's implementing regulation. To remove any doubt, both the law and the rule expressly include “resources expended for ... searching data sources.”⁶¹ Moreover, OMB's rule makes clear that burden estimation is explicitly required for all information collections “whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.”⁶² Thus, the PTO is legally wrong when it asserts that “[a] burden estimation for prior art searches is not required for this collection of information.” Burdens are exempt from estimation only “if the agency demonstrates that the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary.”⁶³ There is no such demonstration in the ICR-SS or in the PTO's reply to my RFC. Thus, the exemption does not apply.

I respectfully request that the Designated Person reviewing this RFR recognize the obvious, that prior art searches performed in support of a patent application are covered by the PRA, and that the PTO has a legal duty to prepare and publish for public review and comment objectively-supported estimates of these burdens. Further, I request that the Designated Person direct the

⁵⁸ In my RFC, I explained why the AIPLA survey violates applicable information quality guidelines and why this affects the PTO's use of it or burden estimation. I respond to the PTO's reply in Section 2.5.6 below.

⁵⁹ RFC, pp. 6-7. The issue of IDSs prepared subsequent to application, and arguably covered under ICR 0651-0031, are irrelevant except insofar as the PTO's burden estimation methodology is the same for both.

⁶⁰ PTO Reply to RFC, p. 4.

⁶¹ 44 U.S.C § 3502(2)(d) and 5 C.F.R. § 1320.3(b)(1)(vii).

⁶² 5 C.F.R. § 1320.3(c).

⁶³ 5 C.F.R. § 1320.3(b)(2).

relevant PTO employees to promptly produce, and seek public comment on transparent and reproducible objectively-supported estimates of this burden, as the law requires.

2.4 “Failure to Account for Disproportional Burdens on Small Entities (Issue 3)”

This issue concerns the objective estimation of burden on small entities. The PTO has concluded that the burdens of patent application are not disproportionately large for small entities, conclusion it supports with no data or analysis. The PTO cannot say its estimates of small-entity burden are “objective” if it has no estimates.

In my RFC, I presented substantial evidence showing that this conclusion is demonstrably counterfactual. It is doubly impossible (were that a mathematically feasible construct) when the available evidence *not* disclosed by the PTO (but referenced in my RFC) supports a contrary conclusion.

2.4.1 “Failure to meet the ‘objectivity’ prong of the IQA (Issue 3.1)”

In its reply, the Office never addresses this evidence, much less attempts to refute it. Instead, the PTO merely asserts (like it did in the ICR-SS) that the Patent Office’s burden estimates are, in fact, objective, *quod erat demonstrandum*. The PTO seems to agree that I am right, that fees are *not* the predominant fraction of total burden, but then implies that it is entitled to exclude these other burdens because it never intended to estimate the *total* paperwork burden of patent application.⁶⁴ Finally, the PTO again relies on the wholly irrelevant fact that patent law requires the PTO to provide discounted fees for small entities. Now the Patent Office would dismiss the survey study I cite because their authors *did not intend* to inform a debate on paperwork burden, not because their estimates are wrong or inaccurate.

I respectfully request that the Designated Person reviewing and responding to this RFR admit that the PTO has failed to estimate burdens on small entities with sufficient specificity to support its putative certification that small entities do not experience disproportionate burdens. The PTO cannot simultaneously refuse to estimate small-entity burdens and claim that its (non)estimates are objective.

2.4.2 “Failure to meet the ‘utility’ prong of the IQA (Issue 3.2)”

In my RFC, I noted that in order to have utility, burden estimates must adhere to the information quality standard of objectivity. The predominant purpose of estimating small-entity burdens is to support an agency determination that it has complied with the small-entity provisions of OMB’s Information Collection Rule.⁶⁵ Neither the ICR nor the ICR-SS provide a supporting record that the PTO “minimize[d] the burden of the collection of information on [small entities]” (5 C.F.R. § 1320.8(d)(1)).

In its reply, the PTO announces a new theory—that biased burden estimates *do have utility* as long as the public is not so mystified that it is utterly unable to comment on them at all:

⁶⁴ PTO Reply to RFC, p. 5.. "Your argument that fees are only a small part of the burden a small entity faces in securing patent protection may well be true, but the USPTO's Federal Register notice and Supporting Statement are aimed at estimating the burden associated with collecting the information at issue in this particular ICR."

⁶⁵ RFC, pp. 9-10 (citing 5 C.F.R. § 1320.9(c)(1-3)).

The documents were ... were apparently useful for the public to comment upon the ICR, since the Office received two comments after publication of the ICR in the Federal Register.⁶⁶

The fact that two members of the public bothered to comment in no way confers practical utility on the PTO's estimates, a term that in context presumes that burden estimates are objective.⁶⁷ This is an especially devious claim given that both commenters (one of whom was me) specifically objected to the estimates' lack of transparency, reproducibility, and objectivity; and both asked the PTO to correct its estimates *before* submitting the ICR to OMB for approval,⁶⁸ which it did not do. The PTO now claims that the Office's burden estimates have utility because two commenters were able to discover their manifold defects despite the Patent Office's determined effort to hide them.

The PTO also advances the novel argument that its burden estimates have utility because OMB did not reject the ICR as improperly submitted: "The documents were obviously useful as a tool for OMB to review the ICR."⁶⁹ This perverse notion of utility is breathtaking. A review of OMB's database from 1981 through 2010 yields 314 ICRs that OMB has designated as improperly submitted. During this period, OMB reviewed 129,954 ICRs. One can only imagine how difficult it would be for the PTO to secure OMB approval of any of its ICRs if OMB were obligated to affirmatively verify that the Patent Office had fully complied with its obligations under § 3506 of the PRA. That, in turn, would vitiate the purpose of the statutory requirement that *agency heads certify* that they have complied with the law.

Even if utility to OMB can be shown, the fact that utility to the government is its only benefit fails the requirements of the PRA because it fails to "ensure the greatest possible *public benefit* from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government." 44 U.S.C. § 3501(2) (emphasis added). Enhancement of utility to the government alone at the expense of the public was not a desired result of the PRA, but one that Congress intended to avoid by enacting it.

Apart from being just plain silly, this theory of utility ignores the text of the Information Quality Act and applicable guidelines. The law states that agencies such as the PTO shall "establish administrative mechanisms allowing affected persons to seek *and obtain* correction of information maintained and disseminated by the agency that does not comply..."⁷⁰ An administrative procedure for processing error correction requests does not comply with the law if it denies affected persons any reasonable likelihood of actually *obtaining* a correction. Information is subject to the law irrespective of whether agency officials (or in this case, OMB) approved its dissemination or agree with its contents. Otherwise, no administrative procedure for

⁶⁶ PTO Reply to RFC, p. 5.

⁶⁷ 44 U.S.C. § 3502(11) and 5 C.F.R. § 1320.3(l).

⁶⁸ Richard B. Belzer, Letter to Susan K. Fawcett *Re: 0651-0032 Comment: Initial Patent Applications*, (May 3, 2010), at <http://www.uspto.gov/news/fedreg/comments/100702finalcomments.pdf>; Ron D. Katznelson, *0651-0032 Comment: Initial Patent Applications*, (May 3, 2010), (hereinafter, "Katznelson Comment on ICR 0651-0032 60-Day Notice"), at <http://www.reginfo.gov/public/do/DownloadDocument?documentID=204566&version=0.>)

⁶⁹ PTO Reply to RFC, p. 5.

⁷⁰ 44 U.S.C. § 3516 note, § (b)(2)(B), emphasis added.

error correction would make any sense.⁷¹ If OMB had intended its approval of an ICR to bar affected persons from seeking and obtaining the correction of errors they contain, it would have exempted ICRs from the definition of “government information” (Section V.6).

Finally, the PTO’s proposed theory of utility is inherently corrupt. It implies that the utility of information can be achieved if OMB approval is accomplished by diversion, trickery, malfeasance and deceit; or if OMB decides for its own undisclosed reasons not to fully enforce the law.

I respectfully request that the Designated Person reviewing and responding to this RFR publicly state that estimates of paperwork burden that are materially biased are *per se* in violation of the PTO’s information quality standard of utility. If the PTO truly believes that biased estimates have practical utility for the public or its own decision-making, it should provide a complete explanation for the basis of this belief.

2.5 “The ICR and ICR-SS Contain Faulty Analytical Methods (Issue 4)”

Burden estimates derived from faulty methods such as PTO’s cannot comply with either the substantive or presentational objectivity standards.⁷² As I noted in previous sections, the PTO’s estimates are neither transparent nor reproducible. Nonetheless, the PTO provides enough information to enable me to demonstrate that certain information in the ICR and ICR-SS is unambiguously deficient in objectivity.

In its reply to my RFC, the PTO acknowledges that my explanation of the IQA and its implementing guidelines is correct. The Office then gives a truly novel excuse for failing to comply:

The burden "estimates" of which you complain do not qualify as "information" within the meaning of the IQA... By definition, estimates do not represent knowledge such as facts or data. "Information," not estimation, is subject to certain reproducibility requirements. See USPTO's IQG, Section IV, 7 ("reproducibility" means the "information is capable of being substantially reproduced, subject to an acceptable degree of imprecision."). No correction is warranted for matters not involving "information."⁷³

If the ICR-SS contains no *knowledge*, how did OMB come to *know* that it should approve it? The PTO’s strange notion that estimates are excluded from the definition of *information* is belied by the Information Quality Act, OMB’s guidelines implementing it, and the PRA, which the IQA amended. The IQA specifically directs OMB to “provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (*including statistical information*).”⁷⁴ OMB’s guidelines are similarly explicit, directing each agency (including the PTO) to “[i]ssue their own information quality guidelines

⁷¹ “Dissemination” means agency initiated or sponsored distribution of information to the public...” See Office of Management and Budget OMB Information Quality Guidelines, p. 8460., Section V.8. OMB’s guidelines require pre-dissemination review (§ III.2) to reduce the number of instances in which erroneous information is dissemination. But the entire purpose of the administrative error correction process is to correct erroneous information that was not detected and corrected by an agency prior to dissemination.

⁷² RFC, pp. 10-17.

⁷³ PTO Reply to RFC, p. 5 (emphasis in original).

⁷⁴44 U.S.C. § 3516 note, emphasis added.

ensuring and maximizing the quality, objectivity, utility, and integrity of information, *including statistical information,...*⁷⁵ As part of its directive to agencies mandating objectivity, OMB directs agencies “to identify the sources of the disseminated information ... and, in a scientific, financial, *or statistical* context, the supporting data and models, so that the public can assess for itself whether there may be some reason to question the objectivity of the sources.”⁷⁶ The definition of objectivity in OMB’s information quality guidelines (and specifically reiterated by the PTO in its own guidelines) includes the statistical term “unbiased.” Estimation is the heart of statistics, so it is unclear what the PTO thinks this term would otherwise mean.

Perhaps the best known federal statistical agencies are the Bureau of Economic Analysis (“BEA”) and the Census Bureau, both of which happen to be sister agencies to the PTO within the Department of Commerce. Each agency is in the business of producing *estimates*, and each recognizes that its estimates are fully subject to OMB’s and their own information quality guidelines. The BEA’s information quality guidelines devote significant attention to estimation procedures, noting that:

BEA strives for the highest level of transparency about data and methods for all its *estimates*, within ethical, feasibility, cost, and confidentiality constraints. This supports the development of consistently high quality data and fosters better value to the public. It also facilitates the reproducibility of such data by qualified third parties.⁷⁷

Likewise, the Census Bureau fully recognizes that its estimates are covered by information quality guidelines.⁷⁸ It even has a link to its information quality guidelines at the bottom of its home page (<http://www.census.gov>). The 14 federal agencies defined as “principal statistical agencies” also have published their own joint information quality guidelines, and these guidelines specifically cover the “[p]roduction of estimates or projections.”

As it happens, the federal government’s FedStats web page includes hyperlinks to every federal agency and program whose mission expressly includes the generation of statistical estimates—96 agencies and programs in all. Among them: the U.S. Patent and Trademark Office.⁷⁹ It is the only agency attempting to take the position that its estimates are excluded from the definition of information under applicable information quality guidelines.

No one uses the PTO’s newly invented definition. Indeed, even the PTO does not use it. Recall that in Section 2.2.2 above, the PTO admitted a correction is necessary to a persistent error in which it described circularly how the PTO’s Information Quality Guidelines apply to this ICR and ICR-SS. The PTO’s reply to my RFC said:

⁷⁵ OMB Information Quality Guidelines, p. 8458, Section II.1 (emphasis added).

⁷⁶ OMB Information Quality Guidelines, p. 8459, Section V.3(a) (emphasis added).

⁷⁷ Bureau of Economic Analysis, *Information Quality Guidelines* (2002), at <http://www.bea.gov/about/pdf/infoqual.pdf>.

⁷⁸ U.S. Census Bureau, *Information Quality Guidelines* (2002), at <http://www.census.gov/quality/guidelines/index.html>.

⁷⁹ FedStats, *Federal Agencies with Statistical Programs* (2008), at <http://www.fedstats.gov/agencies/>; Information Quality Guidelines. FedStats says the PTO “[c]ompiles *statistical information* on patent activity by geographic origin, technological subject matter, ownership, and other characteristics; samples patent and trademark cases to measure quality aspects in the processing of applications; and undertakes customer survey activities” (emphasis added). It includes a hyperlink to the PTO’s Statistics web page (<http://www.uspto.gov/about/stats/index.jsp>).

In the interest of clarity, I note that the sentence should have read: "The Information Quality Guidelines ... apply to this information collection and this information collection and its supporting statement comply with all applicable information quality guidelines"⁸⁰

The first half of this statement is exactly right, without a doubt: the Information Quality Guidelines do apply to this information collection. But to what part of the ICR-SS do the Information Quality Guidelines apply, if not to the burden estimates contained therein? The page numbers?

Finally, the PTO ignores the requirement for presentational objectivity. I have not asked for any "sensitivity analysis" to be provided, as PTO claims.⁸¹ I have sought "presentational objectivity" - *disclosure of the data and of the sources used* that will in turn inform the *degrees of variability found*.⁸² The PTO does not disclose the numerical data it used for the calculations, the time periods they covered or its actual method of calculation. The PTO has apparently done the work: it used specific numerical data from certain time frames, specific assumptions as to their relevance or the scaling required for the ICR estimates, and specific quantitative methods to derive the estimates. All it needs to do is show its work. The PTO's refusal to provide this information violates its own IQA Guidelines which state: "*when asked the USPTO does provide disclosure of the data sources that have been used and the specific quantitative methods and assumptions (if any) that have been employed*"⁸³

I respectfully request that the Designated Person reviewing and responding to this RFR put a halt to this subterfuge. Staff training in information quality principles and standards likely would help, with an emphasis on principles of transparency and open government.⁸⁴ In addition, the PTO should begin now to subject all ICRs to the pre-dissemination review procedures that the Office is required to have in place. The Director can be excused for not having provided supervision to the personnel assigned to respond to this RFC, the first arguably controversial one ever submitted to the Patent Office. Because of the self-evident foolishness and duplicity in the PTO's reply, however, he cannot escape that responsibility henceforth without telegraphing bad faith.

2.5.1 "*Burden estimates improperly use the median value of attorneys' fees rather than the mean (Issue 4.1)*"

In my RFC, I reiterated comments I provided on the 60-day notice⁸⁵ and in prior comments made on the Appeal Rules but which the PTO ignored in the ICR-SS. *See* RFC at 11. The PTO's statutory responsibility under the PRA is to prepare an unbiased estimate of *total* respondent burden. The *total* burden for each information collection element is defined as the *average*

⁸⁰ PTO Reply to RFC, p. 2.

⁸¹ PTO Reply to RFC, p. 6.

⁸² RFC, p. 10.

⁸³ PTO Information Quality Guidelines, Section VII(A).

⁸⁴ *See, e.g.,* Barack Obama, *Memorandum of January 21, 2009: Freedom of Information Act*, 74 Fed. Reg. 4683, "Freedom of Information Act" (2009); Barack Obama, *Memorandum of January 21, 2009: Transparency and Open Government*, 74 Fed. Reg. 4685, "Transparency and Open Government" (2009).

⁸⁵ Katznelson Comment on ICR 0651-0032 60-Day Notice.

burden per respondent multiplied by the *number of respondents*.⁸⁶ See Section 1.1 above. My explanation, which was far more painstaking than should have been necessary, established the mathematical fact that the *median* is a biased estimator of the *average*, except in the special case of symmetrical distributions. In the AIPLA economic survey, which the PTO uses for its estimate of the median hourly rate for patent counsel, the reported distribution is clearly asymmetric, with the mean greater than the median.⁸⁷ Thus, by using the median the PTO has produced a downwardly-biased estimate of average respondent burden. This is not a matter of opinion or judgment, and it is not an “estimate”; saying that that median is biased is, ironically, a “fact” about which everyone is certain.

Everyone, that is, except the PTO’s designated respondent to my RFC, who claims that the term *average* in OMB’s information collection rule means something other than the arithmetic mean:

I do not construe that regulation to require a particular arithmetic technique for calculating burden estimates. Nothing in the plain text of the regulation or the USPTO’s IQG suggests that mean values are required or that an agency’s use of median values is inappropriate.⁸⁸

This error is more than statistical; it also is legal. Contrary to the PTO’s reply, “the plain text of the regulation” issued by OMB requires agencies to “ensure that each collection of information” include “[a]n estimate, to the extent practicable, of the *average* burden of the collection.”⁸⁹ The median of an asymmetric distribution is not (and never can be) the average. Any estimate that uses the median of an asymmetric distribution cannot be an average of anything.

I agree with part of the PTO’s reply—“the USPTO utilized the median professional hourly rate, rather than the mean hourly rate.”⁹⁰ But the notion that the median is “appropriate” is inconsistent with the plain text of OMB’s Information Collection Rule. The Rule does not authorize agencies to supplant its clear language with their own opinions, whims, or wishful thinking.

⁸⁶ See 44 U.S.C. § 3506(c)(1)(B)(iii)(III)(requiring agencies to “ensure that each collection of information ...informs the *person receiving the collection of information* of ... and estimate, to the extent practicable, of the burden of the collection” [emphasis added]) and § 3506(c)(1)(A)(iv)(requiring “a specific, objectively supported estimate of burden”). The law delegates to the Director of the Office of Management and Budget the authority to “establish and oversee standards and guidelines by which agencies are to estimate the burden to comply with a proposed collection of information” (44 U.S.C. § 3504(c)(5)). OMB has exercised this authority, most recently via the 1995 revision to the Information Collection Rule, to define the statutory term *burden* to encompass the “the *total* time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency....” 5 C.F.R. § 1320.3(b)(1) (emphasis added, *See* Reference 8). Taken together, it is clear (and appears never to have been previously questioned) that aggregate burden estimates must include *all* burdens; and that if point estimates of respondent-level burden are estimated, these estimates must be the *arithmetic mean*.

⁸⁷ RFC, pp. 10-12.

⁸⁸ PTO Reply to RFC, p. 6. This bizarre claim is then supported by irrelevant case law dealing with the Information Quality Act when the law at issue is the PRA.

⁸⁹ 5 C.F.R. § 1320.8(b)(3)(iii), emphasis added.

⁹⁰ PTO Reply to RFC, p. 6.

The practical consequence of this error is to understate by about 12% the average and total burden of each information collection. *Ceteris paribus*, this is a **\$1.35 billion** error for the years covered by the ICR.⁹¹

The PTO invokes a decision in *San Luis & Delta-Mendota Water Authority v. Salazar*, 2010 WL 5422597, 88-93 (E.D.Cal. 2010) and argues that it supports PTO's argument that "nothing in the IQA or the agency's guidelines on the IQA mandated how the agency conducted its calculations." That is a mischaracterization of the holding in *San Luis*. Rather, this part of the decision addressed another matter – whether Plaintiffs have shown "judicially manageable standards" in agency IQA guidelines that would permit *judicial review* under the Administrative Procedures Act ("APA"). Standards for judicial review under the APA are irrelevant to my RFC and this RFR. Rather, I request that the agency follow its own IQA guidelines which state that *objectivity* in disseminated information means "ensuring accurate, reliable, and *unbiased* information."⁹²

I respectfully request that the Designated Person reviewing and responding to this RFR recognize the obviousness of the PTO's error, order that it be corrected immediately, and commit never to use medians again when the plain text of the applicable regulation directs it estimate the average. Failing to correct this error (which will be at least PTO's fifth refusal to do so) would signal a willful refusal to comply with an obvious legal requirement.

2.5.2 "Patent drawing cost estimates are based on improper statistical analysis (Issue 4.2)"

In my RFC, I described the PTO's estimate of patent drawing costs as either based on a flawed sample or made up. In this case, the PTO relies on an average of sorts rather than the median, but it discards all the data except for the maximum and the minimum.⁹³ As I pointed out:

[A] sample of two values (particularly if they are extreme values) is certain to be unrepresentative of the cost population from which they were drawn except in the special case where the extremes are equidistant from the mean. Without evidence that this special case is in fact present in each of the cost distributions here, this "mean" does not satisfy the objectivity standard...⁹⁴

⁹¹ The ICR-SS reports a total monetized estimate of annual paperwork burden of \$3,755,013,600, 12% of which is about \$450 million per year. *See* USPTO September 2010 PTO Supporting Statement for ICR 0651-0032, p. 14., Table 3.

⁹² PTO Information Quality Guidelines, Section VII.A., emphasis added.

⁹³ RFC, pp. 12-13.

⁹⁴ In my RFC, I also noted that the specific minimum and maximum values the PTO used appear to have been made up:

What is the likelihood that the minimum prices for all drawing types are exactly the same —\$35? Is this based on an actual survey of price quotes around the nation? How is it possible that the drawings for non-provisional utility applications have the same exact price range as that of provisional applications, when many provisional applications are submitted with informal drawings from inventors' notebooks or internal engineering documents for which the PTO had no estimate of cost?

See RFC, p. 13.

In its reply, the PTO says it “conducted an online search of twelve random patent illustration firms who post their drawing fees online,” a small sample of unknown representativeness. The PTO apparently obtained a wide variety of data from these 12 firms, then it *discarded all of the data* except the lowest and highest costs, summed them and divided by two. This statistical estimation “method” deserves a name befitting its peculiar combination of originality and meretriciousness.⁹⁵

Meanwhile, the PTO continues to stonewall on the simple matter of disclosure. It discloses the names of the 12 firms from which it obtained data but inexplicably refuses to disclose the data it obtained, as if they were some sort of state secret. The important data to disclose are the actual price information – redacting actual names if necessary by numbering them sequentially. It is reasonable to infer from the refusal to disclose these data that disclosure would be embarrassing (because the true mean is materially greater than the reported “mean”), or that the data do not exist.

I respectfully request that the Designated Person reviewing and responding to this RFR obtain the actual data from the relevant staff who purportedly estimated the costs of patent drawings and disclose these data in its response.

2.5.3 *“USPTO provides no source for the average number of drawings in patent applications (Issue 4.3)”*

In my RFC, I faulted the PTO for failing to show its work (again) but also noted certain peculiarities. For example, for two of the four “averages,” the PTO’s estimate is an integer—a rare event for an average. Possibly, the number of drawing pages was “estimated” to the nearest ¼ page, but no one outside the PTO can possibly know because the ICR-SS lacks transparency and reproducibility.⁹⁶ I also raised the question whether the “averages” reported were absolute or conditional.

In its reply, the PTO indicates that it obtained its estimate from previous ICR submissions.⁹⁷ It appears that the PTO cannot provide additional information about their source because source information was missing from its previous ICRs, too. Possibly, no one at PTO even remembers which past ICR, borrowing jargon from virology, what might be called the “index estimate,” or if its identity is known, no one knows where the data came from. All that is known is that the PTO used “its expertise” to locate the index estimate (while of course declining to reveal its identity) and determine that it did not need adjustment. And that, of course, is that. The absence of transparency in the PTO’s estimates is only exceeded by the PTO’s lack of interest in transparency.

⁹⁵ PTO Reply to RFC, p. 6. Given the PTO’s apparent inability to understand the difference between the mean and the median, it is appropriate to be skeptical about whether this sampler was genuinely random, a term with very special statistical meaning. Did each of the 12 firms have an identical probability of being sampled? Are firms that perform patent drawing equally likely to advertise or not advertise their prices online? Etc.

⁹⁶ If “4.8” actually is 4-¾ rounded to the nearest 10th of a page, all four “estimates” are divisible by ¼.

⁹⁷ PTO Reply to RFC, p. 7.

I respectfully request that the Designated Person reviewing and responding to this RFR direct the relevant staff to produce the data and fully disclose them in its response.

2.5.4 *“The excess fee data in Table 5 is incongruous with data in the rest of the Supporting Statement (Issue 4.4)”*

In my RFC, I showed an analysis of the limited data disclosed by the PTO and said that they were more consistent with “guesstimates” than estimates. I computed the implied average number of excess units and obtained a remarkable result: the average number of units is 1.00, 2.00, 8.00 or 10.00, even though these averages apply to tens of thousands of applications, estimated with up to five significant figures. I supported my claim that the PTO’s estimates were made up by showing that they were inconsistent with real data the PTO disclosed in another setting. Moreover, the PTO’s estimates understate the true non-burden hour costs of *past* excess claims fees—by my calculations, an error of \$38 million—and future excess claim fees by a factor of about three (~\$200 million).⁹⁸

In its reply, the PTO provides more qualitative information about its estimation process but nothing quantitative, and nothing that explains the discrepancies between the data reported in Table 5 and other tables in the ICR-SS. The reply dismisses (but never refutes) the data I have obtained elsewhere as “outdated.”⁹⁹ Nonetheless, I am encouraged to read that the PTO’s estimates are forward-looking so as to project excess claim fees for the next three years. If only the PTO would disclose its data and methods, then its claim that “[t]he difference in time frame and the forward looking nature of the estimates explain the discrepancy with the litigation documents” in my possession could be independently validated within “an acceptable degree of imprecision or error.”

I respectfully request that the appellate body reviewing this RFR direct the relevant personnel to fully disclose the data and methods used to derive the excess fee estimates reported in Table 5 of the ICR-SS.

2.5.5 *“The USPTO's forward projections are flawed (Issue 4.5)”*

In my RFC, I pointed out that the PTO’s estimates of the number of respondents to various components of the ICR were inconsistent with the Office’s contemporaneous budget submissions.¹⁰⁰

In its reply, the PTO now admits that the estimates in the ICR-SS are outdated!

The fact that now, months after the Supporting Statement was prepared, the USPTO has different projections of growth does not render the Supporting Statement invalid.¹⁰¹

This is, of course, factually inaccurate in a very fundamental way. The budget projections I cited were prepared in 2009 and published in February 2010. The ICR was published in May

⁹⁸ RFC, pp. 14-16.

⁹⁹ This is an amusing coda to Section 2.5.2. In the case of patent drawings, the PTO relied on undisclosed figures from old ICRs, without any apparent concern that they might be “outdated.”

¹⁰⁰ RFC, p. 16.

¹⁰¹ PTO Reply to RFC, p. 8.

2010.¹⁰² Thus, the PTO's forward projections must have been "outdated" (i.e., invalid) when they were first published for public comments.

Rather than correct the error, the PTO's respondent falls back on the hoary arguments, already dismissed, that (1) estimates are not *information* and thus are exempt from the Information Quality Act¹⁰³ and (2) OMB's approval of the ICR renders all information quality disputes moot.¹⁰⁴

The PTO also is wrong that a change worksheet would be a sufficient vehicle if corrections were in fact warranted. A change worksheet can correct the paperwork burden inventory, but it cannot correct errors in the ICR and ICR-SS, *which are still being disseminated*.¹⁰⁵ My RFC identified this and numerous other errors during the statutorily mandated public comment period. The PTO is obligated to have corrected timely discovered errors before OMB approved the ICR. A change worksheet is the appropriate technology for correcting *minor* errors discovered *after* approval of an ICR.

In my RFC, I also faulted the PTO for failing to use forward-looking figures for fees and attorney hourly rates. As a rough approximation, I suggested inflating them by predicted increases in the Consumer Price Index.¹⁰⁶ In its reply, the PTO waves away all of these issues, without, of course, refuting any of my claims or providing evidentiary or logical support for its own.

I respectfully request that the Designated Person reviewing and responding to this RFR perform a *de novo* review of these issues. A policy should be established (and followed) ensuring that when the PTO seeks increased appropriations because it expects its workload to increase, these expectations inform the development of ICR burden estimates. Otherwise, OMB would be justified in opposing the PTO's requested increases in budgetary authority.

2.5.6 *The AIPLA Report does not meet IQA standards and therefore cannot be relied upon (Issue 4.6)*

In my RFC, I cited public comments submitted to PTO that documented in detail the problems with the Patent Office's reliance on AIPLA economic surveys for burden estimation. The survey does not come close to meeting government-wide standards for statistical surveys. Had the PTO attempted to conduct or sponsor this survey, OMB would have been obligated to disapprove it.¹⁰⁷ I specifically pointed to the PTO's Information Quality Guidelines that,

¹⁰² ICR 0651-0032 60-Day Notice.

¹⁰³ PTO Reply to RFC, p. 8. "As noted above, because estimations are not 'facts' or 'data,' they are not 'information' as defined in the USPTO's IQG."

¹⁰⁴ PTO Reply to RFC, p. 8. "Moreover, in light of OMB's approval of the ICR, the vehicle for USPTO to update any changes in burden estimation (if warranted) is a change worksheet, rather than a correction of the document previously submitted to OMB."

¹⁰⁵ DOC Information Quality Guidelines, Section II ("Operating Unit Responsibilities"). "The guidelines ... cover information disseminated on or after October 1, 2002, regardless of when the information was first disseminated..."

¹⁰⁶ RFC, p. 16. Recall that the PTO objected to my alternative estimates for excess claims because they were "outdated," whereas the PTO's estimates were allegedly forward-looking. *See* Section 2.5.4 above.

¹⁰⁷ RFC, pp. 16-17.

consistent with the government-wide guidelines published by OMB, compel the PTO to enforce the same information quality standards on third-party information it relies upon that it is obligated to enforce on its own data:

[I]f the agency, as an institution, distributes or releases information prepared by an outside party in a manner that reasonably suggests that the agency agrees with the information, this would be considered agency initiated distribution and hence agency dissemination because of the appearance of having the information represent agency views.¹⁰⁸

By citing certain results from the AIPLA economic survey, and indeed, characterizing them as “appropriate” for burden estimation, it is beyond doubt that the PTO “reasonably suggests that the agency agrees with the information.” The AIPLA data used by the PTO must be “considered agency initiated distribution and hence agency dissemination because of the appearance of having the information represent agency views.”

In its reply to my RFC, the PTO refuses to address the substance of my complaint and desperately tries to deny the plain language of its own Information Quality Guidelines, largely by the tool of evasively citing much text in its Guidelines *except the relevant part cited above*:

Under the USPTO's IQG, the AIPLA economic survey report is not a "dissemination" of information. The Guidelines state that "dissemination" [sic] means an "agency initiated or sponsored distribution of information to the public." USPTO's IQG, Section IV, A, 1. Subsection (a) further defines "agency initiated distribution of information to the public" to mean "information that the agency distributes or releases which reflects, represents, or forms any part of the support of the policies of the agency." Id. at Section IV, A, 1, a. The USPTO did not distribute or release the AIPLA economic survey report.

Likewise, the AIPLA economic survey report does not qualify as an "agency sponsored distribution of information" under Subsection (b) of the Guidelines, which "refers to situations where the agency has directed a third party to distribute or release information, or where the agency has the authority to review and approve the information before release." Id. at Section IV, A, 1, b. The USPTO did not commission the report, had no input into the structure of the report and does not rely exclusively upon the results of the report to arrive at estimates. No correction of the documents is required because USPTO utilized the AIPLA economic survey report in formulating some burden estimations.¹⁰⁹

To reiterate, the ICR and ICR-SS are the PTO’s work products, both of which were (and still are) disseminated by the Patent Office. The ICR and ICR-SS are subject to applicable information quality guidelines; the AIPLA economic survey is not. However, when the PTO disseminates information from the AIPLA economic survey within the ICR and ICR-SS in a manner that “reasonably suggests that the agency agrees with the information,” the PTO becomes responsible for the quality of that information in the same way that it would be if it had conducted or sponsored the survey.

In this case, the PTO confers more than just the appearance of agency approval; it confers actual, substantive agreement. This is clear from the ICR and ICR-SS, as I noted in my RFC, but also in the PTO’s reply to my RFC. To justify the PTO’s reliance on the median rather than the mean value for attorney hourly rates, the reply states:

¹⁰⁸ PTO Information Quality Guidelines, Section IV.1.a.

¹⁰⁹ PTO Reply to RFC, p. 9.

As explained in the [ICR] Supporting Statement, the USPTO considers that the median figure is an appropriate value upon which to base estimates given that attorneys charging above the median and below the median would be expected to participate in the process.¹¹⁰

The position the PTO takes in its reply cannot be reconciled with its own Information Quality Guidelines. This position also is not shared by other federal agencies. The Environmental Protection Agency (“EPA”), for example, has a written policy expressly holding third-party information that the Agency disseminates to the same standards that apply to information whose collection it initiates or sponsors.¹¹¹ EPA specifically acknowledges what the PTO tries to deny—if the Agency disseminates information it obtains from third parties in a manner reasonably suggesting agency endorsement, EPA becomes responsible for the quality of that information:

The EPA Information Quality Guidelines apply to information generated by third parties if EPA distributes information prepared or submitted by an outside party in a manner that reasonably suggests that EPA endorses or agrees with it; if EPA indicates in its distribution that the information supports or represents EPA's viewpoint; or if EPA in its distribution proposes to use or uses the information to formulate or support a regulation, guidance, policy or other Agency decision or position.¹¹²

Where did EPA get this idea? From OMB’s information quality guidelines:

[I]f an agency, as an institution, disseminates information prepared by an outside party in a manner that reasonably suggests that the agency agrees with the information, this appearance of having the information represent agency views makes agency dissemination of the information subject to these guidelines.¹¹³

I respectfully request that the Designated Person reviewing and responding to this RFR clearly state that third-party information that the PTO uses to derive burden estimates must adhere to applicable information quality standards in the same manner and to the same extent as if its collection had been conducted or sponsored by the PTO. Further, I respectfully request that the Designated Person direct relevant PTO offices to immediately commence the development and implementation of IQA-compatible surveys to obtain the information the Patent Office needs to prepare burden estimates that are substantively and presentationally objective, as the Information Quality Act and PRA require. The Director cannot credibly rely on the information contained in the PTO’s various ICRs and Supporting Statements. The PTO’s reply to my RFC confirms that this information is deliberately biased and misleading.

¹¹⁰ PTO Reply to RFC, p. 6.

¹¹¹ U.S. Environmental Protection Agency, *A Summary of General Assessment Factors for Evaluating the Quality of Scientific and Technical Information* (2003). (Hereinafter, "General Assessment Factors".)

¹¹² General Assessment Factors, p. 9 (internal citation omitted).

¹¹³ OMB Information Quality Guidelines, p. 8454.

3. CONCLUSION

I appreciate the opportunity to formally appeal the PTO's reply to my November 23, 2010 request for correction. In accordance with the PTO's Information Quality Guidelines, I expect to receive a response to this appeal within 60 days after receipt.

Sincerely,

/Ron Katznelson/

Ron D. Katznelson, Ph.D.

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Attachments: Ron D. Katznelson, Letter to Data-Quality, PTO: *Request for Correction under the Information Quality Act*, (November 21, 2010).

PTO, *Letter from Raul Tamayo to Ron D. Katznelson Re: Request for Correction (Ticket No. 1-17895016)* (January 21, 2011) ("PTO Reply")

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ATTACHMENTS



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS

JAN 21 2011

SENT VIA EMAIL TO: rkatznelson@roadrunner.com

Re: Request for Correction (Ticket No. 1-17895016)

Dear Mr. Katznelson,

The USPTO (or Office) received your letter of November 23, 2010 concerning a request for correction under the Information Quality Act (IQA). You seek correction of two documents: the 60-Day Notice on Information Collection Request for ICR 0651-0032 ("ICR"), 75 Fed. Reg. 23227 (May 3, 2010), and the Supporting Statement for ICR 0651-0032 (Sept. 22, 2010) ("Supporting Statement"). In responding to your 18-page request, I will briefly summarize the salient points you raise, which appear below in bold.

1. ICR tables and Supporting Statement do not contain sources, derivation methods, time periods, or objective bases for estimates

The estimates provided in the Supporting Statement for 0651-0032 are arrived at from a combination of factors, including: internal data collected from the Patent Application Location Monitoring (PALM) and/or Image File Wrapper (IFW) systems; data from the biennial American Intellectual Property Law Association (AIPLA) economic survey report; data from previous iterations of the renewal process; and agency expertise in patent prosecution practice.

In general, estimates of the number of responses expected per year for any particular item in the collection are derived from the internal data collected from the PALM and/or IFW and the data from previous iterations of the renewal process. If data from PALM or IFW is available for a particular item in the collection, the data is examined to determine whether a trend exists that can be used to provide annual estimates for the item for the next three years. If data from PALM or IFW is not available for an item, e.g., if the item is a new item, response estimates are arrived at from an analysis of PALM or IFW data for a closely analogous item(s) in the same or another collection. Agency expertise in patent prosecution practice is relied upon to confirm a reasonable basis for any trend suggested by the data and to identify the most closely analogous item(s).

Estimates of the hours per response for items in the collection are derived from data from the biennial AIPLA economic survey report, data from previous iterations of the renewal process, and agency expertise in patent prosecution practice.

To the extent that the USPTO utilizes staff expertise in crafting estimates, the Office of Patent Legal Administration (OPLA) on its own has over 50 years of non-USPTO patent prosecution experience, and OPLA is but one of the offices involved in providing materials contained in the Supporting Statement. This non-USPTO prosecution experience spans multiple technologies and provides views from various perspectives, including the perspectives of former patent agents, associate attorneys, and law firm partners, working with both small and non-small entity patent applicants.

No correction is warranted based upon the first two pages of your letter.

2. Circular Statement in Needs and Uses (Issue 1)

The Supporting Statement says, “The Information Quality Guidelines . . . apply to this information collection and comply with all applicable information quality guidelines” Supporting Statement at 3. You seek correction of the “tautology” contained in this sentence. While I have serious doubt that this sentence qualifies as “information” under the USPTO’s definition of that term in the Information Quality Guidelines (IQG), I nevertheless concur that the sentence is circular. See USPTO’s IQG, Section 4, A, 4 (defining “information” as “any communication or representation of knowledge such as facts or data . . .”). In the interest of clarity, I note that the sentence should have read:

“The Information Quality Guidelines . . . apply to this information collection and this information collection and its supporting statement comply with all applicable information quality guidelines”

Since OMB has approved the ICR, correction of this sentence would serve no useful purpose. See USPTO’s IQG, Section XI, A, 4, d. Therefore, I decline to issue a correction in this regard.

3. Burden Components Missing from USPTO’s Estimates (Issue 2)

You assert that USPTO has failed to account for all of the burden borne by applicants in submitting patent applications, thus rendering the two documents noncompliant with the Office’s IQG. I disagree.

a. All of the forms in Table 2 do not have burden estimate (Issue 2.1)

As you know, Table 2 in the Supporting Statement lists the “Needs and Uses of Information Collected to Determine Patentability.” This list itemizes each type of information covered by this collection, whether the item appears in a standardized USPTO form or not. Table 3, on the other hand, details the “Burden Hour/ Burden Cost to Respondents.” Table 3 is one of several tables in the Supporting Statement (see also Tables 4, 5, and 6) that estimate the burden to the applicant associated with the various items of information that are being collected.

Although the items listed in Table 2 do not correspond one-to-one with the items listed in Table 3, the Supporting Statement does account for all items listed in Table 2. For example, the first item in Table 2 is Specification, which is used by an applicant to provide a description of the invention. There is no form associated with a Specification. While there is no entry on Table 3 that says “Specification,” items 1 – 26 in Table 3 cover Specifications. This is because a Specification may be contained in any of the items listed at 1 – 26 in Table 3. Although applicants are not required to complete a form called “Specification,” they must provide the USPTO with information relating to their Specification, if they want to proceed with their patent application. Thus, the USPTO has estimated the burden of providing a Specification by providing burdens associated with items 1 – 26 in Table 3.

Your letter mistakenly assumes that there are only two options for showing burden estimation for items listed in Table 2: either the USPTO assumed zero burden or the burden is not included in the Supporting Statement’s estimates. To elaborate upon the example that you cite, you believe that USPTO either estimated zero or neglected to include a burden estimate for an Application Data Sheet (ADS) because applications with and without an ADS form have the same burden estimate. The fault of your logic is that applicants are not required to submit ADS information on the USPTO’s ADS form, so long as they provide the relevant information in some manner to the USPTO. Thus, the estimate for both Applications Containing an ADS and Applications Without an ADS is the same because either way, the burden of providing the information is encompassed by the Office’s estimate. The USPTO exercised a third option which you failed to consider: the burden is contained in the various estimations throughout the Supporting Statement.

The same reasoning is true for the number of applicant responses. Although Table 3 does not track exactly to the items listed in Table 2, the Supporting Statement does contain the estimated number of applicant responses for each piece of information collected.

The Supporting Statement has already provided what your letter seeks. That is, you asked the USPTO to “clarify whether, and if so, how it accounted for the burdens associated with each of the 39 forms[.]” To be clear, though, the Office does not *solely* account for burden associated with forms. Rather, the Office accounts for burdens associated with collection of information conducted or sponsored by the Office, some of which are included on a form, and some of which are not. This further emphasizes why it would not be useful to itemize each item in Table 2 to a burden estimation elsewhere in the Supporting Statement. For these reasons, I find that the presentation of burden estimations and numbers of responses are “objective” within the meaning of the IQG and no correction is warranted.

b. Nothing in the Supporting Statement gives the burden estimate for the small entity status paperwork (Issue 2.2)

Your letter correctly notes that the USPTO has no separate form dedicated to claiming small entity status. Rather, an entity wishing to pay a reduced fee must identify

itself as a small entity in each particular filing for which the fee reduction is claimed. The Supporting Statement does contain burden estimates for the total amount of time the USPTO estimates it will take an applicant to complete each filing. The USPTO's estimates do not itemize the amount of time it will take an applicant to complete each box or question on any particular form. Thus, the amount of time an applicant spends determining small entity status is already included in the burden estimation, albeit not specifically delineated, as you request.

c. The Supporting Statement only includes estimates of attorney time and excludes inventor time in its burden estimates (Issue 2.3)

The USPTO does not currently account for the amount of time inventors spend assembling information for and responding to questions from their patent attorneys. As you know, applicants are not required by law to secure counsel in order to file a patent application. Because many applications are filed *pro se*, the USPTO's burden estimates are likely overstated, since the USPTO assumes that all applications are filed by attorneys. The cost for an unrepresented inventor to file an application is likely lower than the burden the USPTO has estimated for attorneys to file applications on behalf of all applicants. On balance, the failure to include inventor time spent with counsel is therefore negligible to the overall burden estimates.

On January 18, 2011, OMB approved the collection of information contained in 0651-0032. The USPTO will consider, in the future, whether to include an estimate for inventor time spent with counsel in making burden estimations. However, at this time, no correction is warranted.

d. The Supporting Statement does not consider the burden of prior art searches (Issue 2.4)

As you correctly note, prior art searches are not required by law. See 37 C.F.R. § 1.56(a) (patent applicants have "a duty to disclose to the Office all information known to that individual to be material to patentability"); see also Bruno Indep. Living Aids, Inc. v. Acorn Mobility Servs., Ltd., 394 F.3d 1348, 1351 n.4 (Fed. Cir. 2005) ("Because there is no general duty to conduct a prior art search, there is no duty to disclose art of which an applicant is unaware."). A burden estimation for prior art searches is not required for this collection of information.

To the extent your comment focuses on prior art searches associated with filing an Information Disclosure Statement (IDS), the USPTO estimated the burden for filing an IDS in ICR 0651-0031.

4. Failure to Account for Disproportional Burdens on Small Entities (Issue 3)

a. Failure to meet the "objectivity" prong of the IQA (Issue 3.1)

The USPTO's Supporting Statement provides the record for the Office's certification that "no significant impact is placed on small entities[.]" Supporting Statement at 9. The Supporting Statement discloses all information relied upon by USPTO in making this certification.

The Supporting Statement is substantively objective in that it presents all information in an "accurate, clear, complete, unbiased manner, and within the proper context." USPTO's IQG, Section IV, 6, a. The USPTO has identified, throughout the Supporting Statement, when small entities may pay a reduced fee when filing. The USPTO has also identified, throughout the Supporting Statement, the total burden associated with filings.

Your argument that fees are only a small part of the burden a small entity faces in securing patent protection may well be true, but the USPTO's Federal Register notice and Supporting Statement are aimed at estimating the burden associated with collecting the information at issue in this particular ICR. For example, your own characterization of the studies and papers that you cite in footnote 26 deal with costs outside the scope of this ICR, such as the cost of foregone patent protection and the costs of patent enforcement. I find that the documents are objective in their presentation of information.

b. Failure to meet the "utility" prong of the IQA (Issue 3.2)

Although you claim that the ICR and Supporting Statement lack "utility," OMB's approval of the ICR indicates that the documents are, in fact, useful. USPTO's IQG, Section IV, 6, b (defining "utility" as "usefulness of the information to its intended users, including the public."). The documents were obviously useful as a tool for OMB to review the ICR and were apparently useful for the public to comment upon the ICR, since the Office received two comments after publication of the ICR in the Federal Register. Your claim that the documents do not support the small entity certification has been addressed above. I find that the documents comply with the definition of utility in USPTO's IQG.

5. The ICR and ICR-SS Contain Faulty Analytical Methods (Issue 4)

You believe that the USPTO's burden estimates cannot be evaluated because the USPTO has not disclosed data, models and analyses used to estimate burden. As noted above, the basis for providing various estimates is explained in the Supporting Statement and further detailed in this document.

Under the IQA, certain influential information must be reproducible under certain circumstances. The burden "estimates" of which you complain do not qualify as "information" within the meaning of the IQA. "Information" is defined as "any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms." USPTO's IQG, Section IV, A, 4. By definition, estimates do not represent knowledge such as facts or data. "Information," not estimation, is subject to certain

reproducibility requirements. See USPTO’s IQG, Section IV, 7 (“reproducibility” means the “information is capable of being substantially reproduced, subject to an acceptable degree of imprecision.”). No correction is warranted for matters not involving “information.” See USPTO’s IQG, Section XI, A, 4, a.

Likewise, the IQA does not require the sort of sensitivity analysis that you seek in order to render estimates “objective.” The USPTO has complied with the Paperwork Reduction Act and the IQA by providing well-supported estimates, as detailed in the ICR and Supporting Statement and further explained in this document.

a. Burden estimates improperly use the median value of attorneys’ fees rather than the mean (Issue 4.1)

Citing 5 C.F.R. §1320.8(b)(3)(iii), you believe that OMB regulations mandate the use of mean, rather than median, values in burden estimations. I do not construe that regulation to require a particular arithmetic technique for calculating burden estimates. Nothing in the plain text of the regulation or the USPTO’s IQG suggest that mean values are required or that an agency’s use of median values is inappropriate. See San Luis & Delta-Mendota Water Auth. v. Salazar, 2010 WL 5422597, at *88-93 (E.D. Ca. 2010) (holding that nothing in the IQA or the agency’s guidelines on the IQA mandated how the agency conducted its calculations). 5 C.F.R. §1320.8(b)(3)(iii) simply requires an agency to provide “an estimate, to the extent practicable, of the average burden of the collection.”

In estimating burden, the USPTO utilized the median professional hourly rate, rather than the mean hourly rate. As explained in the Supporting Statement, the USPTO considers that the median figure is an appropriate value upon which to base estimates given that attorneys charging above the median and below the median would be expected to participate in the process. Supporting Statement at 9. The Office’s use of an average value in other burden estimations does not mandate the use of a mean value for the professional hourly rate. I find that the median rate is a reasonable tool to use in the estimation of burden and complies with the Office’s IQG.

Paralegal rates were estimated at \$100 per hour. This figure was based, in part, upon the National Association of Legal Assistants 2008 Survey Report. See Table 3.2, page 1. I find that the Office’s estimation in this regard is reasonable and needs no correction.

b. Patent drawing cost estimates are based on improper statistical analysis (Issue 4.2)

You criticize the USPTO’s estimation of the mean patent drawing cost burden because you believe that the sample size was too small and because the Office did not disclose data sources and methods. To estimate the cost of patent application drawings, the USPTO conducted an online search of twelve random patent illustration firms who post their drawing fees online. The USPTO searched the costs for utility, design, and plant drawings. The plant drawing costs also included costs for photographs since both

photographs and drawings can be submitted. Since no costs were found for provisional application drawings, the costs found for the utility drawings were used for estimating the costs for provisionals.

After examining the various cost ranges (which included breakdowns for simple, average, and complex drawings), the USPTO took the lowest and highest costs found, added those costs together, and then calculated the average of that total to arrive at the per sheet cost. The patent illustration firms used in the online search were R & J Patent Drawing; Quality Patent Printing, Inc.; Precision Illustration; Patent Illustration & Design by Vincent; Inventia Patent Drafting; EPIC Creative Services; DPR Patent Drafting Co.; RAYFLECTAR Graphics; Rex Flowers Illustration; Big Sky Illustration; AM Patent Drawings; and Midwest Drafting.

I find that the USPTO's burden estimation of drawing costs comply with the USPTO's IQG and with applicable OMB regulations. There is no requirement to complete a "statistically valid survey" prior to formulating burden estimations, as you suggest. OMB has approved the USPTO's burden estimations for this ICR. Thus, I find no reason to correct cost estimates relating to patent drawing cost estimates.

c. USPTO provides no source for the average number of drawings in patent applications (Issue 4.3)

You seek disclosure of information relating to how the USPTO estimated the average number of drawing sheets in patent applications at page 18 of the Supporting Statement. As a starting point, the Office looked to numbers previously submitted to and approved by OMB. Using its expertise, the Office determined that the numbers did not require adjustment. To answer your question concerning what type of "average" the Office utilized, it was a "conditional average," such that applications containing no drawings were not included in the calculation of the average. I find that no correction is warranted.

d. The excess fee data in Table 5 is incongruous with data in the rest of the Supporting Statement (Issue 4.4)

As discussed in more detail at page 1 of this letter, projections for the number of responses per year is derived from the internal data collected from PALM and/or IFW and the data from previous iterations of the renewal process. In addition, the Office utilized financial receipts and other items provided by the Office of Finance. The data from column (b), Average Fee, in Table 5 is derived from 37 C.F.R. § 1.17. "Average" fees are used to estimate burden because applications containing excess claims will have a different numbers of excess claims. For example, one application may have 100 excess claims and would therefore pay a higher fee than an application containing only 10 excess claims. The "average" fee amounts approximate the fees paid, on average, by applicants making each of the filings listed in Table 5, assuming that each application contains some number of excess claims.

You point to documents provided during the course of a previous USPTO litigation as evidence that the Supporting Statement underestimates excess claim fees. As you note, those litigation documents covered a period of time preceding the filing of the Supporting Statement by several years. Rather than using outdated information, the USPTO instead made estimates, looking forward, to project excess claim fees over the next three years. The difference in time frame and the forward looking nature of the estimates explain the discrepancy with the litigation documents. I find that no correction is warranted in this regard.

e. The USPTO's forward projections are flawed (Issue 4.5)

You assert that the USPTO failed to estimate a rising number of responses in the projection of the number of utility and provisional applications filed, in contradiction to estimates for the budget proposal for FY11. The estimated number of responses appearing in the Supporting Statement reflects the USPTO's data through FY09, which is the data to which the USPTO had access at the time it prepared the Supporting Statement. At that time, the Office of Corporate Planning (OCP) forecasted -0.6% growth for FY10, 0.0% growth for FY11, and 2.9% growth for FY12. In addition, the Supporting Statement from the 2007 renewal somewhat overstated the number of estimated responses, because a reduction in filings was not foreseen at the time it had been prepared.

The fact that now, months after the Supporting Statement was prepared, the USPTO has different projections of growth does not render the Supporting Statement invalid. I find no reason to "correct" the projection estimates. As noted above, because estimations are not "facts" or "data," they are not "information" as defined in the USPTO's IQG. Moreover, in light of OMB's approval of the ICR, the vehicle for USPTO to update any changes in burden estimation (if warranted) is a change worksheet, rather than a correction of the document previously submitted to OMB.

You also argue that the USPTO's estimations should have taken into account an increase in the Consumer Price Index (CPI). The USPTO has not adjusted regulatory patent fees to account for an increase in the CPI since FY09. See 73 Fed. Reg. 47534 (Aug. 14, 2008). Your statement that the Office provides "[n]o objective support for the apparent assumption that CPI will break from its traditional growth trend and remain constant" is inaccurate. No correction is warranted to account for the CPI.

You assert that the 2008 hourly rate utilized by the AIPLA economic survey report should be adjusted upward since the burden estimations cover a future time frame from 2011 to 2013. The USPTO will consider your suggestion in future ICR renewals, but given the currently flat CPI, it does not adopt such an approach at this time. I do not find any correction on this basis warranted.

f. The AIPLA Report does not meet IQA standards and therefore cannot be relied upon (Issue 4.6)

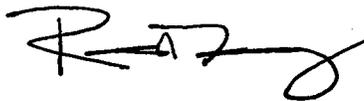
In providing estimates of burden hours, the USPTO sometimes referenced the AIPLA economic survey report, as a benchmark for the estimates. Under the USPTO's IQG, the AIPLA economic survey report is not a "dissemination" of information. The Guidelines state that "dissemination" means an "agency initiated or sponsored distribution of information to the public." USPTO's IQG, Section IV, A, 1. Subsection (a) further defines "agency initiated distribution of information to the public" to mean "information that the agency distributes or releases which reflects, represents, or forms any part of the support of the policies of the agency." *Id.* at Section IV, A, 1, a. The USPTO did not distribute or release the AIPLA economic survey report.

Likewise, the AIPLA economic survey report does not qualify as an "agency sponsored distribution of information" under Subsection (b) of the Guidelines, which "refers to situations where the agency has directed a third party to distribute or release information, or where the agency has the authority to review and approve the information before release." *Id.* at Section IV, A, 1, b. The USPTO did not commission the report, had no input into the structure of the report and does not rely exclusively upon the results of the report to arrive at estimates. No correction of the documents is required because USPTO utilized the AIPLA economic survey report in formulating some burden estimations.

In summary, upon careful review of your letter, I do not find that any information disseminated in the ICR or the Supporting Statement requires corrective action at this time. Thank you for your interest in the issues surrounding the Office's renewal of ICR 0651-0032.

You may appeal my denial of your request within 60 calendar days. Please refer to the USPTO's IQG, Section XI (Affected Person Responsibilities), for appeal procedures.

Sincerely,



Raul Tamayo
Legal Advisor
Office of Patent Legal Administration

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November 23, 2010

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Re: Request for Correction under the Information Quality Act

I hereby submit this Request for Correction (“RFC”) under the Information Quality Act¹ (“IQA”) to correct information disseminated by the U.S. Patent and Trademark Office (“PTO”) in two documents:

The 60-day Notice on Information Collection Request for ICR 0651-0032 (“ICR”) published in the Federal Register at [75 Fed. Reg. 23227](#), May 3, 2010 (“Notice”); and Information Collection Request Supporting Statement for ICR 0651-0032 dated September 2010 (“ICR-SS”).²

The ICR seeks Paperwork Reduction Act (“PRA”) clearance from the Office of Management and Budget (“OMB”) for burdens imposed on the public when preparing and submitting initial patent applications during the three-year period 2011-2013. As one who files patent applications and seeks to analyze PTO Information Collection Requests (“ICRs”) to comment on them, as provided for by law, I am an “individual who uses ... the disseminated information at issue,” and thus am an “Affected Person” as defined under both the government-wide information quality guidelines published by OMB (“OMB IQG”) ³ and the agency-specific guidelines published by the PTO (“PTO IQG”).⁴

The Notice provided the PTO’s numerical estimates of the total imposed paperwork burdens and sought comments from the public on these estimates. My comments were among those in response.⁵ The public comments pointed out PTO’s failure to comply with the PRA and both the OMB and PTO IQGs through its assertion of “estimates” and “beliefs” that lack objective support and which cannot be independently verified. Throughout the Notice, PTO “estimates” quantitative values from which burdens or burden components are calculated. There are four

¹ 44 U.S.C. § 3516 note, Treasury and General Government Appropriations Act for Fiscal Year 2001, Pub. L. No. 106-554, § 515 (2001).

² PTO submission of ICR for Initial Patent Applications, Supporting Statement, OMB No. 0651-0032, (September 2010) available at <http://www.reginfo.gov/public/do/DownloadDocument?documentID=204632&version=0>

³ Office of Management and Budget, “Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies; Notice; Republication, [67 Fed. Reg. 8452-8460](#), (February 22, 2002).

⁴ PTO, “*Information Quality Guidelines*,” online at <http://www.uspto.gov/web/offices/ac/ido/ifoqualityguide.html>.

⁵ Public comments, this ICR at http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201009-0651-002.

unnumbered tables in the Notice containing “estimates” of the number of responses, the time per response, or both. For none of these elements does the PTO disclose the objective basis for its “estimate” or show its work. Beyond the specific unsupported estimated burdens, the number of responses are provided with up to six significant digits, yet their sources, derivation methods or time period from which they were obtained are not disclosed. Very little information in these tables is transparent or reproducible, nor are estimates and data outside the tables. The few instances where “explanations” are attempted only confirm their infirmity.

The PTO failed to respond to the substance of the public comments and ignored the agency’s obligations under the PRA and the IQA when it subsequently disseminated these burden estimates in the ICR-SS. In essentially all respects, the ICR-SS ignores the substantive questions in the comments, repeats the same unsupported or otherwise defective information, and provides the same results of non-existent or flawed statistical analyses. This RFC calls on the PTO to correct *all* the information it disseminated in both documents. In explaining the deficiencies of the disseminated information, this RFC only discusses certain examples with specificity. However, this RFC seeks correction of the PTO’s analytical methods, disclosure of sources, and presentation of the derivations for *each* numerical estimate in both documents, including parameters that lead to the disseminated number of responses, burden-hours, average costs and non-hour burdens.

1 AGENCY DATA IN INFORMATION COLLECTION REQUESTS ARE SUBJECT TO THE IQA. THE INFORMATION DISSEMINATED BY PTO IN THIS ICR IS “INFLUENTIAL INFORMATION”

Under the “Needs and Uses” section of the ICR-SS, the PTO acknowledges the applicability of the OMB and PTO IQGs to this ICR:

“The Information Quality Guidelines from Section 515 of Public Law 106-554, Treasury and General Government Appropriations Act for Fiscal Year 2001, apply to this information collection and comply with all applicable information quality guidelines, i.e., the OMB and specific operating unit guidelines [sic]. This proposed collection of information will result in information that will be collected, maintained, and used in a way consistent with all applicable OMB and USPTO Information Quality Guidelines. (See Ref. A, the USPTO Information Quality Guidelines.)”⁶

The first sentence is tautological at best, circularly stating that the IQGs are compliant with themselves. It is ironic that the sentence presumably describing PTO’s quality obligations is itself in need of quality correction, which the PTO refuses to do despite prior public comments pointing out the error. From the second sentence and the PTO’s repeated historical refusal to provide support compliant with the OMB and PTO IQGs with respect to information it disseminates in ICRs, it could be inferred that the PTO believes that the IQA only applies to the information it collects under the PRA but not to the information it disseminates. If so, the PTO is wrong. Congress enacted the IQA to ensure and maximize the quality, objectivity, utility, and integrity of information (including statistical information) *disseminated by Federal agencies* in general and particularly in fulfillment of the purposes and substantive provisions of the PRA. Thus, the PTO is obligated under the IQA to *disseminate* 60-day notices and ICR supporting statements that comply with the OMB and PTO IQGs.

⁶ ICR-SS at 3.

Entrusted by Congress to supervise all agencies' IQA compliance, OMB specifically required that agencies adhere to the OMB IQG when discharging their obligations under the PRA:

“Given the administrative mechanisms required by [the IQA] as well as the standards set forth in the Paperwork Reduction Act, it is clear that agencies should not disseminate substantive information that does not meet a basic level of quality.” (67 FR 8452, Col. 3). ... “[A]gencies **must make their methods transparent** by **providing documentation**, ensure quality by reviewing the underlying methods used in developing the data and **consulting** (as appropriate) with **experts and users**, and keep users informed about corrections and revisions” (67 Fed. Reg. 8453, Col. 2, emphasis added).

These standing compliance obligations arise in the normal course of the agency's business and are **not** triggered only when a party makes a Request for Correction. Pursuant to OMB directives, the PTO IQG adopted OMB's quality standards, established procedures for affected persons to follow when submitting RFCs, and for PTO to follow in responding to them. The PTO committed to comply, stating that “Effective October 1, 2002, information disseminated by the USPTO **will comply** with all applicable OMB and (these) USPTO information quality guidelines”.⁷ In its own IQG, the PTO adopted OMB standards for information quality wherein the term “quality” is an encompassing term comprising *utility*⁸, *reproducibility*⁹ and *objectivity*¹⁰.

The information in the Notice and the ICR-SS is agency-initiated dissemination of information which, by PTO's own acknowledgement, is subject to the OMB and PTO IQGs:

“Agency initiated distribution of information to the public” refers to information that the agency distributes or releases which reflects, represents, or forms **any part of the support of the policies of the agency**. In addition, if the agency, as an institution, distributes or releases **information prepared by an outside party** in a manner that reasonably suggests that the agency agrees with the information, this would be considered agency initiated distribution and hence agency dissemination because of the appearance of having the information represent agency views”¹¹ (emphasis added).

The Notice and the ICR-SS disseminate information describing burdens to be imposed on the

⁷ *Id.*, emphasis added.

⁸ “Utility” refers to the usefulness of the information to its intended users, including the public. In assessing the usefulness of information that the agency disseminates to the public, the agency considers the uses of the information not only from its own perspective but also from the perspective of the public (*Id.* § IV(A)6(b)).

⁹ “Reproducibility” means that the information is capable of being substantially reproduced, subject to an acceptable degree of imprecision. For information judged to have more (less) important impacts, the degree of imprecision that is tolerated is reduced (increased). With respect to analytical results, “capable of being substantially reproduced” means that independent analysis of the original or supporting data using identical methods would generate similar analytical results, subject to an acceptable degree of imprecision or error (*Id.* § IV(A)7).

¹⁰ “Objectivity” involves two distinct elements, presentation and substance. The presentation element includes whether disseminated information is being presented in an accurate, clear, complete, unbiased manner, and within a proper context. Sometimes, in disseminating certain types of information to the public, other information must be disseminated in order to ensure an accurate, complete, and unbiased presentation. Sources of the disseminated information (to the extent possible, consistent with confidentiality protections) and, **in a scientific, or statistical context, the supporting data and models need to be identified, so that the public can assess for itself whether there may be some reason to question the objectivity of the sources**. Where appropriate, **supporting data shall have full, accurate, transparent documentation, and error sources affecting data quality shall be identified and disclosed to users**. The substance element focuses on ensuring accurate, reliable, and unbiased information. In a scientific, or statistical context, **the original or supporting data shall be generated, and the analytical results shall be developed, using sound statistical and research methods**. If the results have been subject to formal, independent, external peer review, the information can generally be considered of acceptable objectivity (*Id.* § IV(A)6(a), both levels of emphasis added).

¹¹ *Id.* § IV(A)(1)(a).

public during the three-year period 2011-2013, which PTO estimates would cost a total of \$12.61 billion. All the information in the Notice and the ICR-SS pertain to the burdens of filing patent applications required to secure key valuable and essential patent rights. Among other purposes, the PTO states it seeks public comments on ways to minimize these burdens, including burdens on small entities. These burdens are substantial; they clearly depend on agency requirements and policies; and their magnitudes are central to applicants' business decisions. Therefore, the disseminated information is “influential,” as defined in both the OMB and PTO IQGs, because it is “information that will have or does have a clear and substantial impact on important public policies or important private sector decisions”.¹²

The PTO IQG commits the PTO to objectivity standards for influential information that it disseminates, and requires that this information be *reproducible*. The PTO states that its IQG supports reproducibility of analytic results and “*when asked the USPTO does provide disclosure of the data sources that have been used and the specific quantitative methods and assumptions (if any) that have been employed*”¹³ (emphasis added). Public comments⁵ on the 60-day notice *asked* the PTO to do just that (evidently, to no avail), and this RFC again asks the PTO to do so with respect to *all* statistical information, *all* “beliefs” and “estimations” and *all* assumptions made in the Notice and the ICR-SS.

The foregoing request is of sufficient particularity since *all* the information provided by PTO in the Notice and the ICR-SS fail the most elementary information quality test under both the OMB and PTO IQGs because it is not transparent and reproducible. No third party (including OMB) can reproduce the PTO’s estimates of the number of responses, burden-hours per response, or non-hour burdens. Nevertheless, the following sections describe several specific deficiencies and errors that are facially and readily evident. Although these examples are taken from the ICR-SS, they should be understood as also referring to the corresponding items in the Notice, which this RFC also asks PTO to correct.

2 BURDEN COMPONENTS MISSING FROM PTO’S ESTIMATES IN THE ICR

The Notice and the ICR-SS purport to account for all PRA-cognizable paperwork burden borne by applicants in gathering the required information, preparing and filing initial patent applications.¹⁴ However, the PTO has omitted significant components of burden. The ICR-SS fails the “Utility” prong of the IQA because the missing information prevents the public from evaluating and commenting on the full burdens proposed by the ICR – an “intended use” of the information. It also fails the “Objectivity” prong of the OMB and PTO IQGs with respect to its two distinct elements - presentation and substance - because the PTO neglected to include substantial burden information in an “accurate, clear, complete, and unbiased manner.”

The subsections below describe several substantial burden components in initial patent applications omitted from the ICR-SS.

¹² *Id.* § IV(A)(3). Indeed, the PTO IQG specifically identifies information on PTO filings – as in this ICR – Influential: “‘Influential Information’ disseminated by the USPTO... consists primarily of statistical information on USPTO filings and operations.” *Id.* §VII(A).

¹³ *Id.* §VII(A).

¹⁴ ICR-SS at 12.

2.1 Unaccounted burdens associated with all PTO forms listed in ICR-SS Table 2

Table 2 lists 39 PTO forms purported to be covered by this ICR. However, estimated burdens to complete each of these forms, including gathering information, preparing, and submitting the forms to the PTO are nowhere to be found in the ICR-SS. It is also apparent that such burdens are not included in the tabulation of “The Burden Hour/Burden Cost to Respondents” in Table 3. For example, the first ten rows of Table 3 show the PTO’s estimated burden associated with preparing utility, design and plant patent applications. With respect to the Application Data Sheet Form, PTO/SB/14, note that in all three application types, the burden shown for applications with Application Data Sheet is identical to that of applications having no Application Data Sheet. This indicates that either the PTO estimates a zero burden in submitting Form PTO/SB/14 or that it did not include the burdens for this form (and possibly all forms identified in Table 2).¹⁵

Indeed, if the PTO had actually included the burdens of any of the 39 forms, neither the ICR-SS nor the Notice make it transparent. The mere fact that Table 3 contains no entries that specify the number of applicant responses incorporating these forms suggests they are all omitted. For example, most applications are not accompanied by the Multiple Dependent Claim Fee Calculation Sheet Form PTO/SB/07. In Table 5, the PTO estimates that 9,840 utility applications per year will be filed with Multiple Dependent Claims fees, but this table only includes the associated fee burdens. To account for the burden-hours for submitting Form PTO/SB/07, the PTO must provide an estimate of the average burden-hours for a single PTO/SB/07 form and multiply this value by its estimated number of responses (presumably 9,840 per year). No such entries are found in Table 3, or anywhere else in the ICR-SS. Another example is the Declaration – Additional Inventors – Supplemental Sheet, Form PTO/SB02. Not all patent applications name more than one inventor and the ICR-SS provides no estimate for the number of such responses. Apparently, Table 3 contains no entries that could account for the burdens associated with this form, either.

The public cannot know the magnitude of these PTO forms’ paperwork burden omissions. While naming 39 forms, the ICR-SS neither discloses information on the number of responses for any of them nor does it provide estimates for the burden-hours per submitted form and show whether or not they are included in Table 3. The PTO must clarify whether and, if so, how it accounted for the burdens associated with *each of the 39 forms* for which it seeks PRA clearance in this ICR.

2.2 Unaccounted burdens for claiming or changing a Small-Entity Status

Although the ICR-SS acknowledges that the PTO “requires a small entity to identify itself as such to obtain the benefits of small entity status”,¹⁶ it conspicuously fails to account for the paperwork burdens of this requirement. This may be because the PTO no longer has a form for doing so. Yet, the existence of genuine burden is obvious from the PTO’s “Forms FAQ” web page:

¹⁵ Form PTO/SB/14 is listed among the information collections published for this ICR at [reginfo.gov](http://www.reginfo.gov). Opening the form (dated 11/08) at <http://www.reginfo.gov/public/do/DownloadDocument?documentID=201819&version=0> reveals a burden estimate of 23 minutes. The derivation of this estimate is, of course, not included on the form itself, but the burden itself is missing from the ICR-SS and Notice.

¹⁶ ICR-SS at 9.

“To either (1) claim small entity status or (2) to notify the USPTO of the loss of entitlement to small entity status, applicant *must* submit an appropriate statement in *a separate letter* signed by the one of the required parties. As mentioned above, a written assertion of small entity status must be signed by a party listed in 37 CFR 1.27(c)(2). A notification of the loss of entitlement to small entity status must be signed by a party listed in 37 CFR 1.33(b)” (emphasis added).¹⁷

The burden of ascertaining the entity status and generating such a legal letter is not inconsequential. Declarants must make a sufficient inquiry and exercise diligence in determining whether the applicant qualifies as a small entity under the legal definitions in Section 3 of the Small Business Act and in 37 C.F.R. § 1.27(a). Improperly claiming such status or failing to *timely* inform the PTO of a change of status may result in allegations of inequitable conduct by improperly claiming small entity status and in possible loss of patent rights.¹⁸ In fact, the burden of inquiry and legal determination of small entity status is not limited to initial application filings, as it is also required prior to any communication with the Office involving payment of fees. The ICR-SS does not account for any such paperwork burdens.

2.3 Unaccounted burden-hours spent by inventors

“The [PTO] calculates that all of the information in this collection will be prepared by an attorney”.¹⁹ This assumption is counterfactual and incompatible with the legal obligations of inventors. The PTO ignores the time and effort required by inventors to assemble information in a manner amenable to use by their patent attorneys, and the time it takes inventors to respond to inquiries their attorneys inevitably make to clarify and elaborate this information. The ICR-SS also ignores the time it takes for inventors to review the final application and claims prior to filing, as required by law.²⁰

2.4 Unaccounted applicant prior art search burden-hours and non-hour costs

Although an applicant’s prior-art patentability search is not technically required by law, the majority of applicants conduct such searches before and/or during the course of preparing their patent application and in keeping with PTO’s recommendation to do so.²¹ Search costs entail not only burden-hours of search specialists but also substantial usage fees charged by database information providers. The ICR-SS does not count the actual patentability search burdens that applicants (or their retained search services) perform as part of their initial patent application process, although the PTO is fully aware of these search results via applicants’ submission of

¹⁷ PTO’s answer to Q.3 in its answers to FAQ related to filling forms at <http://www.uspto.gov/web/forms/qas.html>.

¹⁸ *Nilssen v. Osram Sylvania, Inc.* 504 F.3d 1223, 1233 (Fed. Cir. 2007) (Affirming the district court’s decision finding that all of the patents in suit are unenforceable due to inequitable conduct in improperly claiming small entity status).

¹⁹ ICR-SS at 12.

²⁰ As a minimum, among the legal obligations of inventors pursuant to their oath and declaration under 37 C.F.R. § 1.63(b)(2-3) is to have “reviewed and understood the contents of the application, including the claims, as amended by any amendment specifically referred to in the oath or declaration;” and to have “disclosed to the Office all information known to the person to be material to patentability as defined in § 1.56.” The ICR-SS identifies Form PTO/SB/01 used by inventors to make such an oath and declaration but no accounting for the inventor time to review the application, the claims and the prior art documents is contained in the ICR.

²¹ PTO, *Filing for a Patent - Starting the Process*. Online at <http://www.uspto.gov/smallbusiness/patents/filing.html> (“Step 2: Conduct a search of prior art. A search of all previous public disclosures (prior art) including, but not limited to, previously patented inventions in the U.S. *should* be conducted to determine if your invention has been publicly disclosed and thus is not patentable. While a search of the prior art before the filing of an application is not required, it is advisable to do so.”) (Emphasis added).

Information Disclosure Statements (“IDSs”) that are often filed with the initial application. PTO’s ICR 0651-0031²² estimates that 341,750 IDSs were filed per year. The PTO’s burden “estimate” (2 hours per IDS) is a trivial portion of the true burden, and at best covers the time to review the search results, select and duplicate pertinent references for inclusion, and prepare the IDS form. Although a systematic search is not performed in every application, evidence shown elsewhere indicates that in 2007 such prior art search costs in applications involving a patentability search were about \$10,000 per application.²³ The ICR-SS totally ignores these important paperwork burdens in initial patent applications.

3 UNACCOUNTED DISPROPORTIONAL BURDENS ON SMALL ENTITIES

3.1 Failure to meet the “Objectivity” requirements of the IQA

PRA regulations in 5 C.F.R. § 1320.9 (“Agency certifications for proposed collections of information”) provide in pertinent part the following:

As part of the agency submission to OMB of a proposed collection of information, the agency (through the head of the agency, the Senior Official, or their designee) shall certify (and *provide a record supporting such certification*) that the proposed collection of information --

....

(c) reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601(6)), the use of such techniques as:

- (1) establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond;
 - (2) the clarification, consolidation, or simplification of compliance and reporting requirements; or
 - (3) an exemption from coverage of the collection of information, or any part thereof;...
- (Emphasis added)

The PTO certified on September 30, 2010, pursuant to 5 C.F.R. § 1320.9(c) that this information collection “reduces burden on small entities.”²⁴ but failed to “provide a record supporting such certification.” Instead, Section 5 of the ICR-SS entitled “Minimizing the Burden to Small Entities” merely asserts the absence of disproportionate burdens on small entities:

“No significant impact is placed on small entities, as the rule (37 CFR 1.27) simply requires a small entity to identify itself as such to obtain the benefits of small entity status.”²⁵

The assertion that “no significant impact is placed on small entities” has no support in the ICR-SS, and indeed, it is counterfactual. The PTO fails to disclose information about small entities that are most adversely affected by this ICR’s burdens – those who cannot afford the expense of filing and obtaining a patent and consequently forgo patent protection.²⁶ Thus, the

²² PTO Information Collection Request, ICR Reference No: 201008-0651-002, available at http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201008-0651-002

²³ Ron D. Katznelson, PRA comments to OMB for PTO 0651-0031, ICR 200707-0651-005. See Appendix A, Patent search firm’s quotes for patentability search reports. Available at <http://www.reginfo.gov/public/do/DownloadDocument?documentID=193230&version=1>.

²⁴ PTO Certification in ICR 0651-0032 at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201009-0651-002#section9_anchor.

²⁵ ICR-SS at 9.

²⁶ See S.J.H. Graham et al. (2009), *infra* note 27, at 1310-1311 (Figure 4 showing that the most frequently cited reason for startup respondents to forgo patent protection is the high cost of obtaining a patent); U.S. Small Bus. Admin., *A Survey of High Technology Firms*, by J. J. Cordes, H. R. Hertzfeld and N. S. Vonortas, at 58 (1999)

ICR-SS fails the “substantive objectivity” prong of the IQA. Moreover, the statement that small entities are entitled by law to a 50% fee discount is substantively correct but neglects to mention that fees comprise a small percentage of the total burden. It therefore fails to meet the “presentation objectivity” prong of the IQA by failing to put the statutory fee reduction in the proper context and is simply misleading in its conclusion.

One way the PTO could have theoretically discharged its IQA “objectivity” obligation with respect to this claim is to have provided evidence and a proper analysis showing that burdens borne by small entities other than fees are insignificant. Alternatively, the PTO could have arguably brought its statement on fee discount into context by showing that the reduced fees for small entities make up for the extra burdens small entities otherwise incur. The ICR-SS does neither; nor could it, because both theories contradict the facts.

Small entity PTO fee discounts are a small fraction (less than 10%) of their total burden even by PTO’s results. The PTO could have discovered this had it performed any analysis. Indeed, the PTO apparently conducted no separate evaluation of the burdens this information collection places on small entities – i.e., the minimum evaluation required for a truthful certification under 5 C.F.R. § 1320.9(c). Moreover, in some collection items, this ICR ignores burdens on small entities altogether and falsely reports *zero* burden to small entities (see Attachment 1).

Filing a patent application that complies with PTO requirements is an essential step for many technology startups and small businesses during their first years of life. Often, their inventors must learn about starting a technology-based business for the first time and must learn (at considerable expense) from outside patent counsel about legal patenting requirements, practices, procedures and related deadlines. For many startups, the cost of acquiring patents is the largest out-of-pocket expenditure before they secure investments or record revenues. It is unclear whether the PTO has ever gathered information required to evaluate these burdens. However, the PTO now has this information readily available. Before taking his appointment as PTO’s chief economist, Dr. Stuart Graham published results of a 2008 survey of 1,300 startup patenting firms across the U.S. that are pertinent to this ICR. The Graham et al. survey showed that startup’s average cost of obtaining a patent was more than \$38,000.²⁷ Subtracting from this amount the drawing costs (\$935 according to this ICR), and about \$2,000 of small entity PTO fees including the issue fee, the average patent application costs estimated for the surveyed startups is over \$35,000. This rough estimate of dollar denominated burden-hours for startups is more than three times the dollar denominated burden-hour estimate disseminated by PTO in

www.sba.gov/advo/research/rs189tot.pdf (Finding patenting costs and enforcement to be small-firms’ most important perceived limitation of patent protection and noting their inability to “cover” with a limited number of patents an area broad enough to keep competitors at bay); W. M. Cohen, R. R. Nelson, and J. P. Walsh, “Protecting Their Intellectual Assets: Appropriability Condition and Why U.S. Manufacturing Firms Patent (or Not)”, *Nat’l Bureau of Econ. Res.*, Working Paper No. 7552, at 15 (2000), available at <http://www.nber.org/papers/w7552> (Finding that the costs of patent enforcement dissuade smaller firms from patenting).

²⁷ S. J. H. Graham, R. P. Merges, P. Samuelson and T. M. Sichelman, “High Technology Entrepreneurs and the Patent System: Results of the 2008 Berkeley Patent Survey”, *Berkeley Technology Law Journal*, Vol. 24, No. 4, 1255, 1311 (2009). Available at SSRN: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1429049. (A survey of more than 1,300 U.S. startup companies from all industry sectors revealed that the average out-of-pocket cost for a respondent firm to acquire its most recent patent was over \$38,000. A respondent executive stated that startups often pay significantly more than incumbents because startups (i) tend to file for patents on inventions that are more important to the company’s core business model than large firms, (ii) usually use outside instead of in-house counsel for patent prosecution; and (iii) often have difficulty monitoring outside counsel to limit overall costs).

Table 3: \$10,790. This raises a substantial question as to the objectivity of PTO’s factual claims about burden estimates for small entities, as reported in the ICR-SS.

Startups are small entities, but those surveyed by Graham et al. may not be fully representative of all small entities as defined by law. Nonetheless, this survey’s findings are consistent with other substantial evidence that, on average, small entities’ patent applications are more complex and costly to prepare than other entities’ applications. Other statistical evidence shows that small entity patents cover more original and broader technologies than large patenting firms as their measured impact level across downstream technologies is broader than that of large entity patents.²⁸ Because small patenting entities are more likely to develop emerging technologies than large firms,²⁹ their patent applications often cover not only multiple new inventions but new ways to practice the inventions. This means that on average, small entity patent applications are more elaborate and contain more information. Small entity patents contain on average 53% more references than those of large entity patents³⁰ and small entity patent applications contain more claims than those of large entities.³¹ Indeed, PTO’s own data in this ICR show that while small entities’ share of all applications is only 25%, their share of all claims in excess of 20 filed in applications is disproportionately 34%.³²

3.2 Failure to meet the “Utility” requirements of the IQA

Without actually evaluating small entities’ *specific* burdens in filing patent applications, the PTO could not have, and indeed had not, shown that its proposed collection minimized such burdens. It could not have evaluated the applicability of potential burden saving techniques as required by 5 C.F.R. § 1320.9(c)(1-3) such as “establishing differing compliance or reporting requirements or timetables that take into account the resources available to [small entities]”; “consolidation, or simplification of compliance and reporting requirements”; or “an exemption [for small entities] from coverage of the collection of information, or any part thereof.” Moreover, without further evaluating the unique causes for burdens of this collection on small entities with fewer than 25 employees, the PTO has no information enabling it to make “efforts to *further* reduce the

²⁸ U.S. Small Bus. Admin., “An Analysis of Small Business Patents by Industry and Firm Size”, by A. Breitzman and D. Hicks, (November 2008), at 8-9. Available at <http://www.sba.gov/advo/research/rs335tot.pdf> (Discussing the study results showing higher Pipeline ‘Originality’ and ‘Generality’ indices for small-entity patents as compared with large entity patents).

²⁹ *Id.*, at 21-24.

³⁰ U.S. Small Bus. Admin., “Small Serial Innovators: The Small Firm Contribution To Technical Change”, by CHI Research, Inc. (February 27, 2003), at 20. Available at <http://www.sba.gov/advo/research/rs225tot.pdf> (The index of patent reference list length takes the value of 1.81 for the small firm patents and 1.18 for the large firm patents); J.R. Allison and M.A. Lemley, “Who’s Patenting What? An Empirical Exploration of Patent Prosecution”, *Vanderbilt Law Review*, **53**, p. 2099, (2000) (reporting on a sample of patents applied for in the early 1990’s in Table 31. At that time, small business patents cited 18.03 references while large entity patents cited an average of 14.31 references).

³¹ See Ron D. Katznelson. “Defects In The Economic Impact Analysis Provided By The USPTO For Its New Claims and Continuation Rules.” Appendix E to *Amicus Curiae* Brief” in *Tafas/GSK v. Dudas*, 541 F.Supp.2d 805 (E.D. Va. 2008), Doc. 258-5, (January 10, 2008), at 14-16. Available at <http://bit.ly/Amicus-Appendix-E>. (Discussing in footnote 62 data showing that small entity applicants submit more claims and will be disproportionately affected by proposed rules limiting the number of claims in their applications).

³² Table 4 of the ICR-SS projects a total of 78,660 utility application filings by small entities and 235,980 by other entities (a 25% share for small entities). Table 5 of the ICR-SS shows projected excess claim fees by entity size, from which Table B hereof imputes in the rightmost column the total number of claims in excess of 20 filed by small entities as 408,940 and 798,216 filed by other entities (a 34% share for small entities).

information collection burden for small business concerns with fewer than 25 employees” (emphasis added), as required by the PRA. 44 U.S.C. § 3506(c)(4).

The ICR-SS and the Notice provide no record to support PTO’s certification made pursuant to 5 C.F.R. § 1320.9(c), that small entity burdens are minimized. Therefore, the ICR-SS and the Notice lack “utility” to the PTO for at least one intended use - supporting a factual PRA certification. The ICR-SS and the Notice also lack “utility” to the public because they fail to provide the necessary information about PTO’s proposed collection to enable the public to “(ii) evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;” and to comment on ways to “(iv) minimize the burden of the collection of information on [small entities] who are to respond...”. 5 C.F.R. § 1320.8(d)(1). Hence, the ICR-SS and the Notice fail to adhere to the OMB and PTO IQGs under both “utility” prongs.

4 FAULTY ANALYTICAL METHODS

As indicated above, information on burden estimates in the ICR-SS and the Notice is opaque and therefore not reproducible. Because the actual burden is known to vary across respondents, “presentational objectivity” requires disclosure of the sources used and the degrees of variability found. “Substantive objectivity” further requires that correct analytical and statistical methods be applied in deriving the burden estimates. The ICR-SS and Notice embody none of these elements. One is unable to fully test the hypothesis of “objectivity” with respect to burden estimates because the information provided in the ICR-SS and Notice is not reproducible. While this RFC requests that such objective support be provided for all burden estimates, the following sections address some of the clearly erroneous or flawed burden estimation methods that were detected in a review of the limited information disclosed.

4.1 Improper use of median values

To calculate the respondent cost burden, the ICR-SS uses a median professional hourly rate for attorneys in private firms as published in the 2009 report of the American Intellectual Property Law Association (AIPLA).³³ Apart from the fact that the AIPLA Report is based on a survey which does not meet the requirements of the IQA (see Section 4.6), PTO’s use of the median cost rather than the mean (average) cost produces downwardly biased burden estimates.³⁴ Estimating the burden in a given category requires that the *average* burden in the category (not the median) be multiplied by the number of units or responses in the category. Indeed, OMB regulations in 5 CFR 1320.8(b)(3)(iii) require that agencies provide “[a]n estimate, to the extent practicable, of the *average* burden of the collection” (emphasis added). The PTO does not follow this regulation, and underestimates the total burdens because the hourly rate distribution is skewed with a median rate that is significantly lower than the mean. The PTO used the AIPLA Report median hourly rate of \$325 where the mean hourly rate found in the same report is \$363. This issue was brought to the PTO’s attention at least twice with full explanations in public

³³ American Intellectual Property Law Association, *Report of the Economic Survey*, (July 2009), hereinafter referred to as “AIPLA Report.” See ICR-SS at 12.

³⁴ The ICR-SS and the Notice also use PTO’s “belief” that an hourly “para-professional” rate will be \$100 without providing any objective support for this “belief” and without indicating whether such rate is the median, typical or average rate. ICR-SS at 16, 17, 36 and 37.

comments in a prior information collection request.³⁵ Thus, the PTO was well aware that the median hourly rate cannot legitimately be used to estimate total burden, but it used the median anyway. The PTO specifically defended its practice with the following non-sequitur:

“The agency believes the median figure is an appropriate figure upon which to base estimates given that attorneys charging above the median and below the median would be expected to participate in the appeal process.”³⁶

Adding insult to intellectual injury, the PTO apparently thinks this rationale justifies using medians to estimate some burdens in this ICR but not others, where it uses averages.³⁷

The most plausible explanation for PTO’s use of the median instead of the mean hourly rate is that using the median enabled PTO to understate dollar denominated burden-hours by about 12%, or about \$1.35 billion for the years covered in this ICR. It is remotely plausible, however, that the PTO did not intend to understate burden by \$1.35 billion and instead it simply lacks fundamental, undergraduate-level knowledge of statistics. In the unlikely event that this is true, I am therefore compelled to digress here and attempt yet another explanation, with the knowledge that the OMB and PTO IQGs both require PTO to either correct the error or provide a reasoned, statistically valid defense.

The median is the numeric value separating the higher half of a sample, a population, or a probability distribution, from the lower half.³⁸ Roughly speaking, in a given distribution of burden values, half of the population incurs burdens lower than or equal to the median burden while the other half incurs burdens that are higher than or equal to the median burden. The median burden can therefore be viewed as some form of a “typical” burden. However, the PRA does not require that agencies estimate the “typical” burdens. Information collection burdens must be accounted for *all* responses - not just for typical responses.

OMB regulations under the PRA at 5 C.F.R. § 1320.3(b)(1) define “burden” as “the *total* time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency...”. Moreover, 5 C.F.R. § 1320.5(a)(1)(iv)(B)(5) requires that agencies provide “[a]n estimate of the *total* annual reporting and recordkeeping burden that will result from the collection of information” (emphasis added). There is only one way for the agency to comply with these legal requirements. For a total of N respondents each having possibly different burdens, wherein the burden for the k^{th} respondent is denoted by b_k , the *total* burden of *all* responses, of which the PRA requires an estimate, is easily shown as:

$$\text{Total burden} = \sum_{k=1}^N b_k = N \times \frac{1}{N} \sum_{k=1}^N b_k = N \times (\text{Average Burden})$$

³⁵ Ron D. Katznelson, Comments on ICR-0651-0063 - Board of Patent Appeals and Interferences, (November 17, 2008) at 14-15. <http://www.reginfo.gov/public/do/DownloadDocument?documentID=95757&version=1>; Richard B. Belzer, Comments on ICR-0651-0063 - Board of Patent Appeals and Interferences, (November 17, 2008) at 9. <http://www.reginfo.gov/public/do/DownloadDocument?documentID=93894&version=1>

³⁶ PTO’s Modified Supporting Statement in ICR-0651-0063 (December 2, 2009) at 9. Available at <http://www.reginfo.gov/public/do/DownloadDocument?documentID=89627&version=2>.

³⁷ ICR-SS at 15 for average costs of CD-R, padded mailing envelopes, and sending express mail; at 16 for average weight of petition papers, and oversized program listing; at 18 for average number of drawing sheets or photographs in patent applications; at 23-24 for average fees listed in Table 5; at 35 for average capital start-up costs.

³⁸ See the mathematical definition of the median at <http://mathworld.wolfram.com/StatisticalMedian.html>.

In other words, it is the average burden (not the median or typical burden) that must be used in conjunction with the total number of responses to calculate the total aggregate burden incurred by *all* respondents. It is important to recognize that the result thus obtained for the total burden is *independent of the specific form of the statistical distribution* of the b_k values and will always be correct as long as the *average* burden value is used in the calculation.

To see the flaw in PTO's method of using median burden values, consider the following example. Let a total set of respondents be comprised of 10,000 respondents wherein 6,000 respondents each have a burden of \$0 and each of the other 4,000 respondents have a burden of \$1,000. The average burden across all 10,000 respondents is $(6,000 \times \$0 + 4,000 \times \$1,000) / 10,000 = \$400$. The median burden in this case is \$0 because both the 5,000th and the 5,001st (middle) respondents, as ordered by increasing burden values, have \$0 burden. The PTO's method for calculating the total burden uses median burden values multiplied by the number of responses. PTO's method would yield a total burden of $\$0 \times 10,000 = \0 . In contrast, using the average burden of \$400 in the calculation, yields a total burden of $\$400 \times 10,000 = \$4,000,000$, the correct result for the aggregate total burden borne by *all* 10,000 respondents. Clearly, using the median value leads to biased estimation whenever the underlying statistical distribution is skewed.

In this ICR, respondents employ attorneys from various law practices with a range of seniority levels and therefore incur a range of hourly rate burdens. To compute the dollar denominated burden of an attorney-hour incurred by *all* respondents, the equation above shows that one must use the average hourly rate burden – not the median value. Assuming that the relationship of the median and the mean in the AIPLA Report survey distribution is representative of the corresponding relationship in the actual distribution of hourly rates, the PTO's method underestimates total burdens due to this factor alone by $(\$363 - \$325) / \$325 = 11.7\%$. The PTO's method is clearly biased and there can be no doubt that it is unjustified in *any* burden analysis performed to comply with the PRA. An agency using this method commits both a statistical analysis error and a violation of law.

4.2 Improper statistical analysis based on flawed or made-up samples

In attempting to estimate patent drawing cost burdens, the ICR-SS explains its method as follows:

“Estimates for the patent drawings can vary greatly, depending on the number of figures to be produced, the total number of pages for the drawings, and the complexity of the drawings. Because there are many variables involved, the USPTO is using *the average of the cost ranges* found for the application drawings to derive the estimated cost per sheet that is then used to calculate the total drawing costs.” (ICR-SS at 17, emphasis added)

The fact that “there are many variables involved” does not justify an erroneous statistical treatment, when a statistically valid survey would have included intrinsically the effects of these variables. As Table A shows, the ICR-SS leaps to a counterfactual conclusion that taking the *algebraic* average of two *extreme* cost values found by the PTO (where?, How?) leads to a correct estimate of the mean value of the costs incurred by applicants.

Cost item as identified in the ICR-SS	Min	Max	Algebraic Average	PTO's Estimated "Mean"
Utility drawings per sheet	\$35	\$135	\$85	\$85
Design drawings per sheet	\$35	\$155	\$95	\$95
Plant photographs or drawings per unit	\$35	\$100	\$68	\$68
Provisional drawing per sheet	\$35	\$135	\$85	\$85

Table A. PTO's flawed use of the algebraic average of the minimum and maximum of sample prices as the mean for the actual distribution of prices. Data from ICR-SS at 18.

This method is flawed for either one of the following reasons: If the PTO considers the minimum and maximum cost for a given item as its only two members of the ensemble over which the mean is calculated, then the calculation of the mean is technically correct (because the mean over a sample of two values is their algebraic average). However, a sample of two values (particularly if they are extreme values) is certain to be unrepresentative of the cost population from which they were drawn except in the special case where the extremes are equidistant from the mean. Without evidence that this special case is in fact present in each of the cost distributions here, this "mean" does not satisfy the objectivity standard contained in the OMB IQG and PTO IQG, at least because a sample of two values is too small for any meaningful statistical inference. If, on the other hand, the PTO had a larger (and more representative) sample than just the two extreme values, the mean over that larger ensemble should have been disclosed and used, and it almost certainly would not have resulted in the values presented in the ICR-SS.

The minimum and maximum prices which the ICR-SS quotes are also suspect. What is the likelihood that the minimum prices for *all* drawing types are exactly the same - \$35? Is this based on an actual survey of price quotes around the nation? How is it possible that the drawings for non-provisional utility applications have the same exact price range as that of provisional applications, when many provisional applications are submitted with informal drawings from inventors' notebooks or internal engineering documents for which the PTO had no estimate of cost? The PTO must disclose all its data sources and methods.

4.3 Improper use of conditional ensembles in estimating drawing sheet cost burdens

On page 18 of the ICR-SS the PTO states the following "averages" for the number of drawing sheets in patent applications:

- 11 sheets in utility applications
- 4.8 sheets in design applications
- 2 sheets in plant applications
- 7.5 sheets in provisional applications

The ICR-SS provides no information as to how these averages were obtained, whether they were based on actual sampling of applications or sampling of issued patents (which are two distinct populations that do not have the same mean number of drawing sheets); the size of the samples, or what time frame such samples spanned. It is noted that half of these values appear as convenient integers to the nearest decimal digit. The OMB and PTO IQGs require full disclosure and support for these estimates.

From the ICR-SS statement such as “On average, 11 sheets of drawings are submitted in *the* utility applications” (ICR-SS at 18, emphasis added), one may reasonably conclude that this estimated average represents an unconditional average over all *the* utility applications (as opposed to *the* design, *the* plant or *the* provisional applications). This presumably includes utility applications that have 0 drawing sheets. If a conditional average were meant, the ICR-SS should have stated that “On average, 11 sheets of drawings are submitted in the utility applications *which contain at least one drawing sheet.*” Only then, would PTO’s method for multiplying this conditional average by the number of applications that have a drawing sheet be correct. Otherwise, with a non-conditional average, PTO’s method of excluding the number of applications with no drawing sheets from the multiplication step produces erroneous double decrement in the total estimated burden. This is because in this case, the use of the non-conditional average (presumably factoring-in applications with 0 drawing sheets in the ensemble, producing a lower overall average) requires multiplication by the number of *all* applications. The ICR-SS also applies this method to provisional applications. It is unclear which averages the PTO is using here because it does not disclose its methods. If the averages are unconditional, as the plain language in the ICR-SS suggests, PTO’s calculations understate the total burden by 9.9% and 28.2% for utility and provisional applications respectively.

4.4 Analysis employing flawed “guesstimates” of excess fees

The ICR-SS provides in Table 5 the non-hour burden estimates for Application Size and Excess Claims Fees. As in all other sections of the ICR-SS, the sources of the data for all responses (column **a**) and the average fee paid (column **b**) are not disclosed. The IQA requires full disclosure of the sources and methods used to obtain these estimates.

Item	Responses (yr) (a)	Filing Fee for Additional Sheets and Claims (c)	Average Fee (b)	Total Non-Hour Cost Burden (yr) (a x (b))	Imputed average number of units in excess (d)=(b)/(c)	Imputed Total Units in Excess (a) x (d)
Provisional Application Size Fee for Each Provisional Application Cover Sheet, filed for Each Additional 50 Sheets Exceeding 100 Sheets - Other Entity	1,837	\$270.00 per each 50 sheets over 100	\$540.00	\$991,980	2.00	3,674
Provisional Application Size Fee for Each Provisional Application Cover Sheet, filed for Each Additional 50 Sheets Exceeding 100 Sheets - Small Entity	1,709	\$135.00 per each 50 sheets over 100	\$270.00	\$461,430	2.00	3,418
Utility Applications, with independent claims in excess of 3 - Other Entity	71,363	\$220.00 for each claim over 3	\$440.00	\$31,399,720	2.00	142,726
Utility Applications, with independent claims in excess of 3 - Small Entity	25,211	\$110.00 for each claim over 3	\$220.00	\$5,546,420	2.00	50,422
Utility Applications, filed with Claims in Excess of 20 - Other Entity	99,777	\$52.00 for each claim over 20	\$416.00	\$41,507,232	8.00	798,216
Utility Applications, filed with Claims in Excess of 20 - Small Entity	40,894	\$26.00 for each claim over 20	\$260.00	\$10,632,440	10.00	408,940
Utility Application Size Fee for Each Original New Utility Application, filed with each additional 50 sheets exceeding 100 sheets - Other Entity	9,301	\$270.00 for each additional 50 sheets over 100	\$540.00	\$5,022,540	2.00	18,602
Utility Application Size Fee for Each Original New Utility Application, filed with each additional 50 sheets exceeding 100 Sheets - Small Entity	2,358	\$135.00 for each additional 50 sheets over 100	\$270.00	\$636,660	2.00	4,716
Plant Application Size Fee for Each Original New Plant Application, filed with Each Additional 50 Sheets Exceeding 100 Sheets - Other Entity	2	\$270.00 for each additional 50 sheets over 100	\$270.00	\$540	2.00	4
Plant Application Size Fee for Each Original New Plant Application, filed with Each Additional 50 Sheets Exceeding 100 Sheets - Small Entity	1	\$135.00 for each additional 50 sheets over 100	\$135.00	\$135	1.00	1
Design Application Size Fee for Each Original New Design Application, filed for each Additional 50 Sheets that Exceeds 100 Sheets - Other Entity	14	\$270.00 for each additional 50 sheets over 100	\$270.00	\$3,780	1.00	14
Design Application Size Fee for Each Original New Design Application, filed for each Additional 50 Sheets that Exceeds 100 Sheets - Small Entity	4	\$135.00 for each additional 50 sheets over 100	\$270.00	\$1,080	2.00	8

Table B. Application size and excess-claims cost estimates provided by Table 5 of the ICR-SS. The rightmost columns shown in gray were added here. Column **d** shows the imputed average number of units in excess that PTO assumed and the rightmost column shows the imputed total number of units filed in excess.

Reverse calculation using the values of the average fees in column **b** divided by the fee per additional unit in excess (claims or pages) shown in column **c** results in the average number of units in excess that the PTO must have used to obtain its estimates of the average fees in column **b**. The average numbers so imputed are shown in column **d** shaded in gray in Table B, which was added to the right of the last column in Table 5.

Note that *all* values for the average number of units in excess are perfect integers, a remarkable result for statistical averages of applicants' filings variations in all these categories. For example, the PTO estimates with 5 significant digits that 25,211 small entity applications will be filed with more than 3 independent claims and that the average number of claims in excess of 3 averaged over these 25,211 applications will be exactly 2.00. Moreover, the PTO projects that this same precise average number of claims in excess will also be filed in the set of 71,363 applications of other entities. The average units in excess are clearly "guesstimates" that were not analytically derived from actual PTO historical statistics. This can be inferred because several of these "guesstimates" are inconsistent with real data the PTO made available in other proceedings. Based on detailed distribution of the number of independent and total claims in patent applications filed by both size entities,³⁹ it was found that for the set of applications filed with more than 3 independent claims, the average number of independent claims in excess of 3 was 3.03 – not 2.00 as imputed from Table 5. It was also found that for those applications filing total claims in excess of 20, the average number of total claims in excess of 20 was 18.46 – not 8.00 or 10.00 as imputed from Table 5. Note that in both cases, PTO's "guesstimates" understate the burden compared to an actual analysis of real PTO claims data.

PTO's "guesstimates" of the average excess claim fees paid by respondents in column **b** of Table 5 appear to significantly underestimate these average non-hour cost burdens. Indeed, note that by summing the total non-hour cost burdens in rows 3-6 of Table B, the ICR-SS apparently projects that the PTO will collect \$89,085,812 per year from excess claim fees during the years 2011 to 2013. This estimate is grossly inconsistent with PTO's own historical financial records, which indicate that *actual* annual revenues from excess claim fees (in excess of 3 independent and in excess of 20 total claims) have been substantially higher. In FY 2006 - *five years earlier* than a period projected in the ICR, they were \$126.8 million,⁴⁰ - 42% greater. Given that the then-lower prevailing PTO fees per excess claim produced substantially higher excess claim fees, and given the fact that the average number of claims filed in applications have been increasing at approximately 4.5% per year,⁴¹ one can reasonably conclude that PTO's

³⁹ PTO's Administrative Record production in *Tafas v. Dudas* (2007) at A03554-A03620. (Analysis of this claim distribution data shows that 94,765 applications were filed with more than 3 independent claims, wherein the average number of claims in excess of 3 in this set was 3.03. There were 131,141 applications filed with more than 20 total claims, wherein the average number of claims in excess of 20 in this latter set was 18.46).

⁴⁰ PTO's Administrative Record production in *Tafas v. Dudas* (2007) at A07093, "Patent Excess Claims Fees collected by Year," (showing that in FY 2006 the PTO collected a total of \$126.8 M in excess claim fees comprising \$49,535,007 for Independent Claims in Excess of Three and \$77,310,180 for Total Claims in Excess of Twenty).

⁴¹ PTO's Administrative Record production in *Tafas v. Dudas* (2007) at A05620, PTO e-mail from Gregory Morse to Robert Bahr, "Independent and Total Claims in Application at Filing for FY 1998-2007" and at A04369-A04371, PTO e-mail from Peter Toby Brown, "Average Claims for Applications Filed, Allowed and Issued During a Fiscal Year and by Fiscal Year of Filing." (Regression analysis of the data on the average number of total claims excluding the fee-increase transient of 2005 shows a growth rate of about 4.5% per year). This data is presented along with claim growth data in other national patent offices in: Ron D. Katznelson, "Defects in the economic impact analysis provided by the USPTO for its new Claims and Continuation rules" (2008), p. 13, available at <http://bit.ly/Amicus-Appendix-E>.

“guesstimate” underestimates such non-hour burdens in 2013 by a factor of about three. If there were any reversals of historical growth trends that warrant projections of excess claim fee collections during 2011-2013 at levels that are radically lower than those collected in FY 2006, the PTO had not disclosed them. Nor did it provide any rationale or objective support for its downward projections. In view of these clear estimation anomalies, all other integer “guesstimates” in Table 5 are presumptively inaccurate and must all be corrected with full disclosure of their sources and methods.

4.5 Lack of proper forward projection of burdens for 2011-2013

Although the PTO does not disclose the source of data for the number of responses in the ICR-SS, the total number of utility applications and provisional applications it projects therein appear within 0.1% of the number of such applications the PTO published for Fiscal Year 2009 in its Annual Report and its Pendency Model - mere database updating deviations. There is no objective reason to assume that no growth in all number of responses would occur from 2009 to 2013 given the historical growth trends in patent applications. Indeed, the PTO’s budget request for FY 2011⁴² submitted to OMB projects that the total number of utility, plant and reissue applications will increase from the actual 460,924 in FY 2009 to 488,500 in FY 2013 – an increase of 6%. Moreover, pursuant to its authority under 35 U.S.C. § 41(f), the PTO routinely raises its fees based on the Consumer Price Index (“CPI”) at the end of the year. However, throughout the non-hour burden calculations, the ICR-SS and Notice employ the currently prevailing fees to project fee costs in 2011-2013. No objective support is given for the apparent assumption that CPI will break from its traditional growth trend and remain constant, or that the PTO will forgo upward fee adjustments as it must in order to recover its costs. Clearly, the year-over-year burden increases have not been factored-in the ICR-SS and Notice. The PTO must correct this in the ICR-SS and Notice and project the burdens associated with the number of responses it will receive in 2011-2013 based on its own projected application growth (which it had provided to OMB) and based on generally accepted projections of the CPI in 2010-2012.

In addition, the ICR-SS and Notice cite the 2009 AIPLA Report as the source for the hourly rate. Both neglected to disclose that the AIPLA Report is not prospective and that it reported charges prevailing during 2008. If any AIPLA Report hourly rates from 2008 were to be relied on, they must be scaled up based on generally accepted projected index to provide objective estimates for the hourly rates during 2011-2013.

4.6 The AIPLA Report does not meet IQA standards and therefore cannot be relied upon for purposes of PRA burden estimation

Numerical information from the AIPLA Report controls about 90% of the total burden estimated by the ICR-SS and Notice. The PTO was previously informed of the AIPLA Report’s inapplicability for the purposes of PRA burden estimation. For a public comment on a draft burden estimation methodology report prepared for PTO, Dr. Richard Belzer reviewed the survey underlying the AIPLA Report on which the PTO relies and found it wanting.⁴³ The

⁴² *USPTO’s FY 2011 President’s Budget*, (Feb. 2010), <http://www.uspto.gov/about/stratplan/budget/fy11pbr.pdf>, at 26.

⁴³ Richard B. Belzer, Letter to Raul Tamayo RE: Request for Comments on Methodology for Conducting an Independent Study of the Burden of Patent-Related Paperwork (75 *Fed. Reg.* 8649) (2010), at http://www.uspto.gov/patents/announce/prastudy_regchkbk.pdf, at 10-11. This analysis was included in

survey is actually a census of 15,395 AIPLA members and known non-members, of whom the maximum response rate was only 21%. OMB statistical policy standards and guidelines require a nonresponse bias analysis in any case where a survey response rate is less than 80% or an item response rate is less than 70%.⁴⁴ No such analysis was provided for the AIPLA survey in the ICR-SS or the Notice.

Of course, the AIPLA can employ whatever quality standard it sees fit for its purposes and OMB's standard does not apply to the AIPLA survey directly. Rather, OMB survey requirements arise from the PTO's decision to utilize the AIPLA survey in lieu of performing its own. The OMB IQG requires agencies to meet applicable information quality guidelines whenever they disseminate third-party information in a manner that reasonably conveys the impression of endorsement. Indeed, the PTO IQG acknowledges this obligation by stating that "if the agency, as an institution, distributes or releases *information prepared by an outside party* in a manner that reasonably suggests that the agency agrees with the information, this would be considered agency initiated distribution and hence agency dissemination because of the appearance of having the information represent agency views"⁴⁵ (emphasis added). Therefore, the ICR-SS and Notice do not adhere to both the OMB and PTO IQGs and must be corrected accordingly.

5 CONCLUSION

The corrections requested in this RFC benefit PTO by providing its leadership valid and much better information upon which to base important decisions on pending process reforms. Without a correct record of applicant burden, PTO officials are virtually assured of choosing options that do not reflect their intent. Because PTO's existing estimates are systematically biased to understate burden, and in many cases missing entirely, it would be easy for the PTO's leadership to choose process reform options that unwittingly increase burden, thereby violating the PRA's clear objective of reducing burden at every reasonable opportunity. In short, systematically biased estimates of burden such as are found in the ICR-SS and Notice cannot have practical utility to the PTO.

Moreover, the corrections requested in this RFC benefit the public by permitting it to provide informed comment, as the PRA clearly requires. Both the Notice and the ICR-SS are seriously deficient in this regard. They are neither transparent nor reproducible; where they provide useful information, it is demonstrably biased to understate actual burdens; and therefore, these information disseminations do not allow the public to provide meaningful comment, as required by law.

For these reasons, I request that PTO correct the specific errors identified or referenced herein; disclose all data, models, methods, and analyses necessary to reproduce its estimates; republish the Notice in the Federal Register as a new 60-day notice in order to permit the public to comment on its substance, as corrected.

Dr. Belzer's comments in this ICR (see Richard B. Belzer, 0651-0032 Comment: Initial Patent Applications, (July 2, 2010). Available at <http://www.reginfo.gov/public/do/DownloadDocument?documentID=204565&version=0>).

⁴⁴ Office of Management And Budget, *Standards and Guidelines for Statistical Surveys*. Guidelines 3.2.9-10 (2006), http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/statpolicy/standards_stat_surveys.pdf, at 16-17.

⁴⁵ PTO IQG, § IV(A)(1)(a).

Please contact me at the phone number or the email listed below if there are any questions pertaining to this RFC.

Thank you for your attention to this matter

Sincerely,

/Ron Katznelson/

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Email: rkatznelson@roadrunner.com

ATTACHMENT 1



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IC Title: Papers filed under 1.41, 1.48, and 1.53(c)(2) Agency IC Tracking Number:

Is this a Common Form? No IC Status: New

Obligation to Respond: Required to Obtain or Retain Benefits

CFR Citation: 37 CFR 1.53(b) and 1.53(c)(2) 37 CFR 1.41(a)(2) and 1.48

Information Collection Instruments:

Document Type	Form No.	Form Name	Instrument File	URL	Available Electronically?	Can Be Submitted Electronically?	Electronic Capability
No records found.							

Federal Enterprise Architecture Business Reference Module

Line of Business: Economic Development

Subfunction: Intellectual Property Protection

Privacy Act System of Records

Title:

FR Citation:

Number of Respondents: 7,500

Number of Respondents for Small Entity: 0

Affected Public: Private Sector

Private Sector: Businesses or other for-profits

Percentage of Respondents Reporting Electronically: 0 %

	Requested	Program Change Due to New Statute	Program Change Due to Agency Discretion	Change Due to Adjustment in Agency Estimate	Change Due to Potential Violation of the PRA	Previously Approved
Annual Number of Responses for this IC	7,500	0	7,500	0	0	0
Annual IC Time Burden (Hours)	5,625	0	5,625	0	0	0
Annual IC Cost Burden (Dollars)	379,575	0	379,575	0	0	0

Documents for IC

Title	Document	Date Uploaded
No associated records found		

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IC Title: Petition to Accept Non-Signing Inventors or Legal Representatives/Filing by Other Than All the Inventors or a Person not the Inventor

Agency IC Tracking Number:

Is this a Common Form? No

IC Status: Modified

Obligation to Respond: Required to Obtain or Retain Benefits

CFR Citation: 37 CFR 1.43 37 CFR 1.47 37 CFR 1.42

Information Collection Instruments:

Document Type	Form No.	Form Name	Instrument File	URL	Available Electronically?	Can Be Submitted Electronically?	Electronic Capability
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Federal Enterprise Architecture Business Reference Module

Line of Business: Economic Development

Subfunction: Intellectual Property Protection

Privacy Act System of Records

Title:

FR Citation:

Number of Respondents: 1,950

Number of Respondents for Small Entity: 0

Affected Public: Private Sector

Private Sector: Businesses or other for-profits

Percentage of Respondents Reporting Electronically: 0 %

	Requested	Program Change Due to New Statute	Program Change Due to Agency Discretion	Change Due to Adjustment in Agency Estimate	Change Due to Potential Violation of the PRA	Previously Approved
Annual Number of Responses for this IC	1,950	0	0	-450	0	2,400
Annual IC Time Burden (Hours)	1,950	0	0	-450	0	2,400
Annual IC Cost Burden (Dollars)	391,190	0	0	-90,322	0	481,512

Documents for IC

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View Information Collection (IC)

IC Title: Petition to Accept Unintentionally Delayed Priority/Benefit Claim **Agency IC Tracking Number:**

Is this a Common Form? No

IC Status: Modified

Obligation to Respond: Required to Obtain or Retain Benefits

CFR Citation: 37 CFR 1.55 37 CFR 1.78

Information Collection Instruments:

Document Type	Form No.	Form Name	Instrument File	URL	Available Electronically?	Can Be Submitted Electronically?	Electronic Capability
No instruments found.							

Federal Enterprise Architecture Business Reference Module

Line of Business: Economic Development

Subfunction: Intellectual Property Protection

Privacy Act System of Records

Title:

FR Citation:

Number of Respondents: 1,090

Number of Respondents for Small Entity: 0

Affected Public: Private Sector

Private Sector: Businesses or other for-profits

Percentage of Respondents Reporting Electronically: 0 %

	Requested	Program Change Due to New Statute	Program Change Due to Agency Discretion	Change Due to Adjustment in Agency Estimate	Change Due to Potential Violation of the PRA	Previously Approved
Annual Number of Responses for this IC	1,090	0	0	170	0	920
Annual IC Time Burden (Hours)	1,090	0	0	170	0	920
Annual IC Cost Burden (Dollars)	1,537,565	0	119,900	221,085	0	1,196,580

Documents for IC

Title	Document	Date Uploaded
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