

**PAPERWORK REDUCTION ACT - OMB CONTROL NUMBER 0651-00XX
BOARD OF PATENT APPEALS AND INTERFERENCES (BPAI) ACTIONS**

[Any comment on or before 7 November 2003 may be sent to BPAI.Rules@uspto.gov, with "paperwork" in the subject line. After that date, comments must be directed to the address provided in the forthcoming Federal Register Paperwork Reduction Act notice.]

12. Estimate of Hour and Cost Burden to Respondents

Table 3 calculates the burden hours and costs of this information collection to the public, based on the following calculation factors:

• **Respondent Calculation Factors**

Based on estimates derived from the filing patterns of previous years, the USPTO estimates that it receives the following number of responses per year:

- 10 Extensions of Time on a Showing of Good Cause
- 10 Showings of Excusable Neglect for Consideration of a Late Filing
- 1 Request for Disqualification of Counsel in a Contested Case
- 250 Notifications of Real Party in Interest and Related Judicial Proceedings
- 5 Petitions by Part Owner to Exclude an Inventor or Co-owner from Proceedings
- 6,756 Amendments, Affidavits, and Other Evidence After Appeal (*Ex Parte* and *Inter Partes*)
- 6,881 Appeal Briefs (*Ex Parte*), including an amended brief if necessary
- 1,342 Requests to Reopen Prosecution - Reply under 1.111 (*Ex Parte* and *Inter Partes*)
- 2,684 Reply Briefs, including Supplemental Examiner's Answer (*Ex Parte*)
- 5 BPAI Requests for Additional Briefing on a Matter
- 136 Requests for Rehearing (*Ex Parte*)
- 10 Appellant's Briefs and Service in *Inter Partes* Reexamination
- 10 Respondent's Briefs and Service In *Inter Partes* Reexamination
- 10 Rebuttal Briefs in *Inter Partes* Reexamination
- 30 Comments in Opposition to Request for Rehearing, Owner's Request to Reopen Prosecution, and Examiner's Determination on BPAI New Ground of Rejection
- 10 Requests for Rehearing (*Inter Partes*)
- 250 Identifications of Lead Counsel (Interferences)
- 250 Requests for Access to or Copies of Office Records Directly Related to a Contested Case (including motions seeking access to any abandoned or pending application)
- 250 Clean Copies of Claims (Interferences)
- 250 Annotated Copies of Claims (Interferences)

- 500 Notices of Requested Relief and Basis for the Relief
- 875 Substantive Motions, including preliminary motions, motions for judgment, motions to change count, and specific motions, such as patentability motions
- 375 Responsive Motions under 41.121, including motions to amend, add, or cancel claims and motions to correct inventorship in a contested case
- 625 Miscellaneous Motions, including motions to exclude and requests to suspend an interference
- 1,125 Oppositions
- 1,125 Replies to Oppositions
- 500 Requests for an Oral Argument
- 125 Requests for Reconsideration of a Decision on a Motion
- 95 Requests for Adverse Judgment
- 250 Notices of Service of a Discovery Request (automatic)
- 25 Discovery Requests (additional)
- 150 Requests for an Interference
- 60 Settlement Agreements
- 3 Petitions for Untimely Filing of Interference Settlement Agreement
- 60 Requests that Settlement Agreement be filed Separately from the Interference File
- 3 Petitions for Access to an Interference Settlement Agreement

• **Burden Hour Calculation Factors**

The USPTO estimates that it takes an average of 6 minutes (0.1 hours) to 80 hours to gather the information, prepare the requests, motions, briefs, notifications, oppositions, and amendments, and submit them to the USPTO. There are a wide range of completion times for the items in this collection. The majority of the items in this collection take more than one hour to complete. The USPTO estimates that the Settlement Agreement, at 80 hours, takes the most time of any item in this collection to complete. This estimate not only takes into account the time to gather the information and prepare the agreement, but also the time for the parties involved to negotiate. Time is also factored in for preparing the agreement for submission to the USPTO and other parties, such as making multiple copies. The next group of items that take the most time to complete, the Request for Disqualification of Counsel in a Contested Case, Substantive Motions, and Oppositions at 40 hours; the Notice of Requested Relief and Basis for the Relief at 25

hours; the Appellant's Brief and Service in *Inter Partes* Reexamination and Respondent's Brief and Service in *Inter Partes* Reexamination at 24 hours; filing a reply to an opposition at 20 hours; the Appeal Brief (Ex Parte), the Rebuttal Brief in *Inter Partes* Reexaminations, Request for Rehearings, Responsive Motions, Request for Reconsideration of a Decision on a Motion and Request for Interferences at 16 hours; and the Petition for Access to an Interference Settlement Agreement at 12 hours also take into account the time to prepare the copies for the USPTO and other parties, in addition to the time for researching and preparing the response itself. The rest of the items range in complexity from petitions, requests, briefs, comments, and amendments which take an hour or more to complete, to notifications and requests

which take a few minutes to complete.

• **Cost Burden Calculation Factors**

In 2003 the Committee on Economics of Legal Practice of the American Intellectual Property Law Association published a report that summarized the results of a survey which included data on professional hourly billing rates. The professional hourly rate used in this submission (\$286 per hour) is the median rate for associate attorneys in private firms as published in that report. The \$30/hour rate is an average of paraprofessional and clerical salary rates. The USPTO believes that an associate attorney will complete the majority of the items in this collection, and that the remaining items will be completed by a paraprofessional.

Table 3: Burden Hour/Burden Cost to Respondents

Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a) x (b)	Rate (\$/hr) (d)	Total Cost (\$/yr) (e) (c) x (d)
Extensions of Time on a Showing of Good Cause	4	10	40	\$286.00	\$11,440.00
Showing of Excusable Neglect for Consideration of a Late Filing	4	10	40	\$286.00	\$11,440.00
Request for Disqualification of Counsel in a Contested Case	40	1	40	\$286.00	\$11,440.00
Notification of Real Party in Interest and Related Judicial Proceedings	0.3	250	75	\$30.00	\$2,250.00
Petition by Part Owner to Exclude an Inventor or Co-owner from Proceedings	4	5	20	\$286.00	\$5,720.00
Amendments, Affidavits, and Other Evidence after Appeal (<i>Ex Parte</i> and <i>Inter Partes</i>)	1	6,756	6,756	\$286.00	\$1,932,216.00
Appeal Brief (<i>Ex Parte</i>), including an amended brief if necessary	16	6,881	110,096	\$286.00	\$31,487,456.00
Request to Reopen Prosecution - Reply under 1.111 (<i>Ex Parte</i> and <i>Inter Partes</i>)	0.5	1,342	671	\$286.00	\$191,906.00
Reply Briefs, including Supplemental Examiner's Answer (<i>Ex Parte</i>)	6	2,684	16,104	\$286.00	\$4,605,744.00
BPAI Request for Additional Briefing on a Matter	6	5	30	\$286.00	\$8,580.00
Request for Rehearing (<i>Ex Parte</i>)	6	136	816	\$286.00	\$233,376.00
Appellant's Brief and Service in <i>Inter Partes</i> Reexamination	24	10	240	\$286.00	\$68,640.00
Respondent's Brief and Service in <i>Inter Partes</i> Reexamination	24	10	240	\$286.00	\$68,640.00
Rebuttal Brief in <i>Inter Partes</i> Reexamination	16	10	160	\$286.00	\$45,760.00

Comments in Opposition to Request for Rehearing, Owner's Request to Reopen Prosecution, and Examiner's Determination on BPAI New Ground of Rejection	8	30	240	\$286.00	\$68,640.00
Request for Rehearing (<i>Inter Partes</i>)	16	10	160	\$286.00	\$45,760.00
Identification of Lead Counsel (Interferences)	0.3	250	75	\$30.00	\$2,250.00
Request for Access to or Copies of Office Records Directly Related to a Contested Case (including motions seeking access to any abandoned or pending application)	0.3	250	75	\$30.00	\$2,250.00
Clean Copy of Claims (Interferences)	0.5	250	125	\$30.00	\$3,750.00
Annotated Copy of Claims (Interferences)	2	250	500	\$286.00	\$143,000.00
Notice of Requested Relief and Basis for the Relief	25	500	12,500	\$286.00	\$3,575,000.00
Substantive Motions, includes the following: Preliminary Motions Motion for Judgment Motions to Change Count Specific Motions such as Patentability Motions	40	875	35,000	\$286.00	\$10,010,000.00
Responsive Motions under 41.121, includes the following: Motion to Amend, Add, or Cancel a Claim Motion to Correct Inventorship in a Contested Case	16	375	6,000	\$286.00	\$1,716,000.00
Miscellaneous Motions, includes the following: Motion to Exclude Request to Suspend an Interference	4	625	2,500	\$286.00	\$715,000.00
File an Opposition	40	1,125	45,000	\$286.00	\$12,870,000.00
File a Reply to an Opposition	20	1,125	22,500	\$286.00	\$6,435,000.00
Request an Oral Argument	0.1	500	50	\$30.00	\$1,500.00
Request for Reconsideration of a Decision on a Motion	16	125	2,000	\$286.00	\$572,000.00
Request for Adverse Judgment	0.3	95	29	\$286.00	\$8,294.00
Notice of Service of a Discovery Request (automatic)	2	250	500	\$30.00	\$15,000.00
Discovery Request (additional)	2	25	50	\$286.00	\$14,300.00
Request an Interference	16	150	2,400	\$286.00	\$686,400.00
Settlement Agreement	80	60	4,800	\$286.00	\$1,372,800.00
Petition for Untimely Filing of Interference Settlement Agreement	8	3	24	\$286.00	\$6,864.00
Request that Settlement Agreement be filed Separately from the Interference File	0.3	60	18	\$30.00	\$540.00
Petition for Access to an Interference Settlement Agreement	12	3	36	\$286.00	\$10,296.00
Totals	-----	25,046	269,910	-----	\$76,959,252.00

13. Total Annualized Cost Burden

There are capital start-up costs, postage fees, filing fees, fees for obtaining certified and uncertified copies of documents involved in interferences and appeals

from the USPTO, and costs for English translations of documents. There are no operation and maintenance costs associated with this information collection. BPAI's rules permit parties to submit electronic files of

the specification; the claims; any motion, opposition, or reply; affidavit testimony; exhibits, transcripts of cross-examination depositions; principal, opposition and reply briefs at final hearing; and other material, such as statutes, rules and court and administrative precedent relied upon in 37 CFR 1.633 preliminary motions, principal briefs, oppositions or replies on 100mb ZIP disk or a Compact Disk-Read Only Memory (CD-ROM) or a Compact Disk-Recordable (CD-R). The submission of these documents on a ZIP disk or a CD-ROM makes it easier for the BPAI to search through these documents and reduces the likelihood that an argument or other evidence will be overlooked by an administrative patent judge or other BPAI personnel. This option adds capital start-up costs related to the preparation and submission of ZIP disks and CD-ROMs.

The costs provided in this section for the CD-ROMs are for the CD-R variety of compact discs. Given the current state of technology, and the fact that CD-Rs are less expensive to produce in small quantities than CD-ROMs, the USPTO believes that parties will elect to use CD-Rs, particularly since five copies of the compact disc must ultimately be made. On a CD-R, data can be copied more than once, making it a viable alternative, particularly if a small quantity of discs needs to be produced. Producing a single CD-R can cost as little as \$200 and the USPTO believes that the cost for subsequent CD-Rs will be one dollar. The software that is used to create the compact discs allows the user the option to make CD-R copy a "permanent" copy so that its data cannot be overwritten.

In order to make the CD-R copies of the various documentation, the parties must have the necessary equipment and supplies, including a CD drive capable of recording onto CD-R media (a "CD burner"), CD recording software, blank CD-R media (CDs), cases and labels for the CDs, and a padded mailing envelope for shipping. The average cost of a CD burner is approximately \$200, depending on the speed and type of PC connection.

Commercial software for creating CDs, such as *Easy CD Creator 5.0*, retails for approximately \$100, although basic CD recording software is typically included with the CD burner. Blank CD-R media with plastic jewel cases can be purchased for approximately \$10 for 10 blank CDs, or about \$1 per disc. The average cost of software for labeling CDs, including blank labels and case inserts, is approximately \$20. In sum, the USPTO estimates the additional costs for the hardware, software, and supplies necessary for CD submissions to be approximately \$330.

These documents can also be submitted on a ZIP disk. If the parties choose this route to submit the documentation, they must have the necessary

equipment and supplies, including a ZIP drive capable of copying the compressed files onto the ZIP disk, compression software, blank ZIP disks, and labels for the ZIP disks. Parties submitting documentation on the ZIP disks have a choice between an internal or an external ZIP drives. External drives seem to be the most popular and also seem to have the most selection. Since some people may rather have an internal drive instead of an external drive, and vice versa, an average of the cost for an external and internal drives has been used to calculate these capital start-up costs. The average cost for a ZIP drive that can read and write 100mb ZIP disks, regardless of whether it is an internal or an external drive, is \$90.

If the user does not already own a compression/utility software program to compress the large files, software programs such as Stuffit Deluxe 8.0 and WinZip 8.1 are available for an average cost of \$35. Compression/utility software does not appear to be automatically available with the ZIP drive. Parties who choose to file the brief on a ZIP disk must make five copies of the ZIP disk: four copies are submitted to BPAI and one copy is served on the opponents. A package of six 100mb ZIP disks costs \$55 per package or roughly \$9.17 per disk. A starter kit containing 20 erasable labels for the ZIP disks costs \$8. In sum, the USPTO estimates the additional costs for the hardware, software, and supplies necessary for the ZIP disk submissions to be approximately \$188.

Additionally, the USPTO estimates that padded 8.5 x 11-inch mailing envelopes for safely shipping the CDs and the ZIP disks cost approximately \$12 for a package of 12, or about \$1 per envelope. **Therefore, there is a total of \$530 in capital start-up costs associated with this collection.**

The USPTO estimates that the average cost for mailing the CDs/ZIP Disks will be 95 cents. This estimated postage cost covers the costs of mailing the CDs/ZIP Disks and any associated paperwork, such as a cover letter for the submission. The USPTO estimates that 10 CDs/ZIP Disks will be submitted per year, for a total postage cost of \$10 per year.

The items in this collection may be submitted by mail through the United States Postal Service. The postage rates for items in this collection vary greatly, depending on a number of factors. One factor is that these items can be mailed using a variety of services, namely First Class, Priority, and Express Mail. For some items, two copies are mailed to BPAI. Consequently, the items that are mailed to BPAI can vary in weight, which also affects the postage costs. In addition, in the majority of cases where two copies are submitted to BPAI, another copy is served on the requestor or party, which is figured into the postage

cost. In these cases, one service is used to mail the requirement to BPAI and another to serve the paper on the requestor or the party. In the case of the motions, an exhibit is submitted with the motion.

Table 4 shows how the postage costs were determined for each of the items in the collection. The following abbreviations are used in the table: (EM) for Express Mail, (FC) for First Class Mail, and (PM) for Priority Mail.

Table 4: Postage Cost Breakdown

Item	Breakdown of Postage Costs (Weight, Mail Service, # of Copies)	Postage Costs
Extensions of Time on a Showing of Good Cause	1 oz. FC = \$0.37 - filed with BPAI	\$0.37
Showing of Excusable Neglect for Consideration of a Late Filing	2 oz. FC = \$0.60 - filed with BPAI	\$0.60
Request for Disqualification of Counsel in a Contested Case	1 lbs. X 2 copies = 2 lbs. PM = \$5.00 - filed with BPAI 1 lbs. EM = \$17.85 - served on party	\$22.85
Notification of Real Party in Interest and Related Judicial Proceedings	1 oz. X 2 copies = 2 oz. FC = \$0.60 - filed with BPAI 1 oz. EM = \$13.65 - served on party	\$14.25
Petition by Part Owner to Exclude an Inventor or Co-owner from Proceedings	5 oz. FC = \$1.29 - filed with BPAI	\$1.29
Amendments, Affidavits, and Other Evidence after Appeal (<i>Ex Parte</i> and <i>Inter Partes</i>)	2 oz. FC = \$0.60 - filed with BPAI	\$0.60
Appeal Brief (<i>Ex Parte</i>), including an amended brief if necessary	3 oz. FC = \$0.83 - filed with BPAI	\$0.83
Request to Reopen Prosecution - Reply under 1.111 (<i>Ex Parte</i> and <i>Inter Partes</i>)	2 oz. FC = \$0.60 - filed with BPAI	\$0.60
Reply Briefs, including Supplemental Examiner's Answer (<i>Ex Parte</i>)	2 oz. FC = \$0.60 - filed with BPAI	\$0.60
BPAI Request for Additional Briefing on a Matter	3 oz. FC = \$0.83 - filed with BPAI	\$0.83
Request for Rehearing (<i>Ex Parte</i>)	4 oz. FC = \$1.06 - filed with BPAI	\$1.06
Appellant's Brief and Service in <i>Inter Partes</i> Reexamination	9 oz. FC = \$2.21 - filed with BPAI 9 oz. FC = \$2.21 - served on requester	\$4.42
Respondent's Brief and Service in <i>Inter Partes</i> Reexamination	9 oz. FC = \$2.21 - filed with BPAI 9 oz. FC = \$2.21 - served on requestor	\$4.42
Rebuttal Brief in <i>Inter Partes</i> Reexamination	6 oz FC = \$1.52 - filed with BPAI 6 oz. FC = \$1.52 - served on requestor	\$3.04
Comments in Opposition to Request for Rehearing, Owner's Request to Reopen Prosecution, and Examiner's Determination on BPAI New Ground of Rejection	3 oz. FC = \$0.83 - filed with BPAI 3 oz. FC = \$0.83 - served on requestor	\$1.66
Request for Rehearing (<i>Inter Partes</i>)	5 oz. FC = \$1.29 - filed with BPAI 5 oz. FC = \$1.29 - served on requestor	\$2.58
Identification of Lead Counsel (Interferences)	1 oz. X 2 copies = 2 oz. FC = \$0.60 - filed with BPAI 1 oz. EM = \$13.65 - served on party	\$14.25
Request for Access to or Copies of Office Records Directly Related to a Contested Case (including motions seeking access to any abandoned or pending application)	1 oz. X 2 copies = 2 oz. FC = \$0.60 - filed with BPAI 1 oz. EM = \$13.65 - served on party	\$14.25
Clean Copy of Claims (Interferences)	2 oz. X 2 copies = 4 oz. FC = \$1.06 - filed with BPAI 2 oz. EM = \$13.65 - served on party	\$14.71
Annotated Copy of Claims (Interferences)	3 oz. X 2 copies = 6 oz. FC = \$1.52 - filed with BPAI 3 oz. EM = \$13.65 - served on party	\$15.17

Notice of Requested Relief and Basis for the Relief	5 oz. X 2 copies = 10 oz. FC = \$2.44 - filed with BPAI 5 oz. EM = \$13.65 - served on party	\$16.09
Substantive Motions, includes the following: Preliminary Motions Motion for Judgment Motions to Change Count Specific Motions such as Patentability Motions	3 oz. + 2 oz. Exhibit = 5 oz. X 2 copies = 10 oz. FC = \$2.44 - filed with BPAI 5 oz. EM = \$13.65 - served on party	\$16.09
Responsive Motions under 41,121, includes the following: Motion to Amend, Add, or Cancel a Claim Motion to Correct Inventorship in a Contested Case	2 oz. + 2 oz. Exhibit = 4 oz. X 2 copies = 8 oz. FC = \$1.98 - filed with BPAI 4 oz. EM = \$13.65 - served on party	\$15.63
Miscellaneous Motions, includes the following: Motion to Exclude Request to Suspend an Interference	2 oz. + 2 oz. Exhibit = 4 oz. X 2 copies = 8 oz. FC = \$1.98 - filed with BPAI 4 oz. EM = \$13.65 - served on party	\$15.63
File an Opposition	2 oz. X 2 copies = 4 oz. FC = \$1.06 - filed with BPAI 2 oz. EM = \$13.65 - served on party	\$14.71
File a Reply to an Opposition	2 oz. X 2 copies = 4 oz. FC = \$1.06 - filed with BPAI 2 oz. EM = \$13.65 - served on party	\$14.71
Request an Oral Argument	1 oz. X 2 copies = 2 oz. FC = \$0.60 - filed with BPAI 1 oz. EM = \$13.65 - served on party	\$14.25
Request for Reconsideration of a Decision on a Motion	4 oz. X 2 copies = 8 oz. FC = \$1.98 - filed with BPAI 4 oz. EM = \$13.65 - served on party	\$15.63
Request for Adverse Judgment	1 oz. X 2 copies = 2 oz. FC = \$0.60 - filed with BPAI 1 oz. EM = \$13.65 - served on party	\$14.25
Discovery Request (automatic)	2 oz. X 2 copies = 4 oz. FC = \$1.06 - filed with BPAI 2 oz. EM = \$13.65 - served on party	\$14.71
Discovery Request (additional)	2 oz. X 2 copies = 4 oz. FC = \$1.06 - filed with BPAI 2 oz. EM = \$13.65 - served on party	\$14.71
Request an Interference	2 oz. FC = \$0.60 - filed with BPAI	\$0.60
Settlement Agreement	4 oz. X 2 copies = 8 oz. FC = \$1.98 - filed with BPAI 4 oz. EM = \$13.65 - served on party	\$15.63
Petition for Untimely Filing of Interference Settlement Agreement	2 oz. X 2 copies = 4 oz. FC = \$1.06 - filed with BPAI 2 oz. EM = \$13.65 - served on party	\$14.71
Request that Settlement Agreement be filed Separately from the Interference File	1 oz. X 2 copies = 2 oz. FC = \$0.60 - filed with BPAI 1 oz. EM = \$13.65 - served on party	\$14.25
Petition for Access to an Interference Settlement Agreement	3 oz. FC = \$0.83 - filed with BPAI	\$0.83
English Translation of a Non-English Language Document and Affidavit	5 oz. X 2 copies = 10 oz. FC = \$2.44 - filed with BPAI 5 oz. EM = \$13.65 - served on party	\$16.09

The postage costs shown in Table 4 are in turn used in Table 5 to calculate the total postage costs for each of the items and for the collection as a whole. The total annual postage costs/non-hour cost burden for the items in this collection are outlined in Table 5 below:

Table 5: Postage Costs - Nonhour Cost Burden

Item	Responses (yr) (a)	Postage Costs (b)	Total Cost (yr) (a x b)
Extensions of Time on a Showing of Good Cause	10	\$0.37	\$4.00
Showing of Excusable Neglect for Consideration of a Late Filing	10	\$0.60	\$6.00

Request for Disqualification of Counsel in a Contested Case	1	\$22.85	\$23.00
Notification of Real Party in Interest and Related Judicial Proceedings	250	\$14.25	\$3,563.00
Petition by Part Owner to Exclude an Inventor or Co-owner from Proceedings	5	\$1.29	\$6.00
Amendments, Affidavits, and Other Evidence after Appeal (<i>Ex Parte</i> and <i>Inter Partes</i>)	6,756	\$0.60	\$4,054.00
Appeal Brief (<i>Ex Parte</i>), including an amended brief if necessary	6,881	\$0.83	\$5,711.00
Request to Reopen Prosecution - Reply under 1.111 (<i>Ex Parte</i> and <i>Inter Partes</i>)	1,342	\$0.60	\$805.00
Reply Briefs, including Supplemental Examiner's Answer (<i>Ex Parte</i>)	2,684	\$0.60	\$1,610.00
BPAI Request for Additional Briefing on a Matter	5	\$0.83	\$4.00
Request for Rehearing (<i>Ex Parte</i>)	136	\$1.06	\$144.00
Appellant's Brief and Service in <i>Inter Partes</i> Reexamination	10	\$4.42	\$44.00
Respondent's Brief and Service in <i>Inter Partes</i> Reexamination	10	\$4.42	\$44.00
Rebuttal Brief in <i>Inter Partes</i> Reexamination	10	\$3.04	\$30.00
Comments in Opposition to Request for Rehearing, Owner's Request to Reopen Prosecution, and Examiner's Determination on BPAI New Ground of Rejection	30	\$1.66	\$50.00
Request for Rehearing (<i>Inter Partes</i>)	10	\$2.58	\$26.00
Identification of Lead Counsel (Interferences)	250	\$14.25	\$3,563.00
Request for Access to or Copies of Office Records Directly Related to a Contested Case (including motions seeking access to any abandoned or pending application)	250	\$14.25	\$3,563.00
Clean Copy of Claims (Interferences)	250	\$14.71	\$3,678.00
Annotated Copy of Claims (Interferences)	250	\$15.17	\$3,793.00
Notice of Requested Relief and Basis for the Relief	500	\$16.09	\$8,045.00
Substantive Motions, includes the following: Preliminary Motions Motion for Judgement Motions to Change Count Specific Motions such as Patentability Motions	875	\$16.09	\$14,079.00
Responsive Motions under 41.121, includes the following: Motion to Amend, Add, or Cancel a Claim Motion to Correct Inventorship in a Contested Case	375	\$15.63	\$5,861.00
Miscellaneous Motions, includes the following: Motion to Exclude Request to Suspend an Interference	625	\$15.63	\$9,769.00
File an Opposition	1,125	\$14.71	\$16,549.00
File a Reply to an Opposition	1,125	\$14.71	\$16,549.00
Request an Oral Argument	500	\$14.25	\$7,125.00
Request for Reconsideration of a Decision on a Motion	125	\$15.63	\$1,954.00
Request for Adverse Judgement	95	\$14.25	\$1,354.00
Discovery Request (automatic)	250	\$14.71	\$3,678.00
Discovery Request (additional)	25	\$14.71	\$368.00

Request an Interference	150	\$0.60	\$90.00
Settlement Agreement	60	\$15.63	\$938.00
Petition for Untimely Filing of Interference Settlement Agreement	3	\$14.71	\$44.00
Request that Settlement Agreement be Filed Separately from the Interference File	60	\$14.25	\$855.00
Petition for Access to an Interference Settlement Agreement	3	\$0.83	\$2.00
English Translation of a Non-English Language Document and Affidavit	25	\$16.09	\$402.00
Totals	25,071	-----	\$118,383.00

Please note that the “English Translation of a Non-English Language Document and Affidavit,” while included in the table above, is not included in Table 3: Burden Hour/Burden Cost to Respondents. Therefore, the total number of responses per year shown for the postage costs is higher than that shown in Table 3. While trying to determine the burden associated with the English translations, the USPTO determined that this item might be better represented as part of the burden described in this section, rather

than Section 12 Estimate of Hour and Cost Burden to Respondents. This decision was based on the costs that we could find for the translations. The translation costs were determined based on the average length of a submission and a per page translation fee. Since the per page translation fees were used to determine the costs, the USPTO decided that this requirement would be better described in this section, rather than Section 12. **Therefore, there is a total of \$118,393 in postage costs associated with this collection.**

The minimum total annual filing fee/non-hour cost burden to respondents is outlined in Table 6 below:

Table 6: Filing Fees - Nonhour Cost Burden

Item	Responses (yr) (a)	Filing Fees (b)	Total Cost (Yr) (a x b)
Extensions of Time on a Showing of Good Cause	10	\$0.00	\$0.00
Showing of Excusable Neglect for Consideration of a Late Filing	10	\$0.00	\$0.00
Request for Disqualification of Counsel in a Contested Case	1	\$0.00	\$0.00
Notification of Real Party in Interest and Related Judicial Proceedings	250	\$0.00	\$0.00
Petition by Part Owner to Exclude an Inventor or Co-owner from Proceedings	5	\$130.00	\$650.00
Amendments, Affidavits, and Other Evidence after Appeal (<i>Ex Parte</i> and <i>Inter Partes</i>)	6,756	\$0.00	\$0.00
Filing a Brief in Support of an Appeal, includes the following: Appeal Brief (<i>Ex Parte</i>), including an amended brief if necessary Appellant's Brief and Service in <i>Inter Partes</i> Reexamination Respondent's Brief and Service in <i>Inter Partes</i> Reexamination	5,440	\$320.00	\$1,740,800.00
Filing a Brief in Support of an Appeal (small entity), includes the following: Appeal Brief (<i>Ex Parte</i>), including an amended brief if necessary	1,461	\$160.00	\$233,760.00
Request to Reopen Prosecution - Reply under 1.111 (<i>Ex Parte</i> and <i>Inter Partes</i>)	1,342	\$0.00	\$0.00
BPAI Request for Additional Briefing on a Matter	5	\$0.00	\$0.00
Request for Rehearing (<i>Ex Parte</i>)	136	\$0.00	\$0.00
Comments in Opposition to Request for Rehearing, Owner's Request to Reopen Prosecution, and Examiner's Determination on BPAI New Ground of Rejection	30	\$0.00	\$0.00

Request for Rehearing (<i>Inter Partes</i>)	10	\$0.00	\$0.00
Identification of Lead Counsel (Interferences)	250	\$0.00	\$0.00
Request for Access to or Copies of Office Records Directly Related to a Contested Case (including motions seeking access to any abandoned or pending application)	250	\$0.00	\$0.00
Clean Copy of Claims (Interferences)	250	\$0.00	\$0.00
Annotated Copy of Claims (Interferences)	250	\$0.00	\$0.00
Notice of Requested Relief and Basis for the Relief	500	\$0.00	\$0.00
Substantive Motions, including the following: Preliminary Motions Motion for Judgment Motions to Change Count Specific Motions such as Patentability Motions	875	\$0.00	\$0.00
Responsive Motions under 41,121, including the following: Motion to Correct Inventorship in a Contested Case Request and Responsive Motion to Correct Office Mistake Request and Responsive Motion to Correct Applicant Mistake Petition and Responsive Motion to Correct Inventorship in a Patent	375	\$0.00	\$0.00
Miscellaneous Motions, including the following: Motion to Exclude Request to Suspend an Interference	625	\$0.00	\$0.00
File an Opposition	1,125	\$0.00	\$0.00
File a Reply to an Opposition	1,125	\$0.00	\$0.00
Request an Oral Argument	500	\$0.00	\$0.00
Request for Reconsideration of a Decision on a Motion	125	\$0.00	\$0.00
Request for Adverse Judgment	95	\$0.00	\$0.00
Notice of Service of a Discovery Request (automatic)	250	\$0.00	\$0.00
Discovery Request (additional)	25	\$0.00	\$0.00
Request an Interference	150	\$0.00	\$0.00
Settlement Agreement	60	\$0.00	\$0.00
Petition for Untimely Filing of Interference Settlement Agreement	3	\$400.00	\$1,200.00
Request that Settlement Agreement be filed Separately from the Interference file	60	\$0.00	\$0.00
Petition for Access to an Interference Settlement Agreement	3	\$400.00	\$1,200.00
Totals	22,352	-----	\$1,977,610.00

Please note that the estimated number of responses shown in the table above does not match the estimated number of responses shown in Table 3: Burden Hour/Burden Cost to Respondents. The Reply Briefs, including the Supplemental Examiner's Answer (*Ex Parte*) and the Rebuttal Brief in *Inter Partes* Reexamination were deleted from the fees for the large entities and other filers because they do not have filing fees attached to them. These briefs, plus the Appellants and Respondent's Briefs in *Inter Partes* Reexamination, were also deleted from the fees for the small entities. **Therefore, there is a total of \$1,977,610 in filing fees associated with this**

collection.

Although the Request for Access to or Copies of Office Records Directly Related to a Contested Case does not have a specific filing fee associated with it, there are document fees that a party must pay when requesting copies of USPTO records in a contested case. The USPTO's rules state that any request for access to or copies of USPTO records directly related to a contested case must be filed with the BPAI. The request must precisely identify the records and if copies are being requested, then the appropriate fee for the documents listed under 37 CFR 1.19(b) must

be included (Attachment G). Table 7 lists the fees under 37 CFR 1.19(b).

Table 7: Certified and Uncertified Copies of Office Documents

Item	Document Supply Fee
Certified and uncertified copies of Office documents: Certified or Uncertified Copy of the Paper Portion of Patent Application as Filed Processed Within Seven Calendar Days	\$20.00
Certified or uncertified copy of paper portion of patent-related file wrapper and contents: File Wrapper and Paper Contents of 400 or Fewer Pages	\$200.00
Additional Fee for Each Additional 100 page or Portion Thereof	\$40.00
Additional fee for Certification	\$25.00
Certified or Uncertified Copy on Compact Disc of Patent-Related File-Wrapper Contents That Were Submitted on Compact Disc	
First Compact Disc in a Single Order	\$55.00
Each Additional Compact Disc in the Single Order of Paragraph (b)(3)(l) of this Section	\$15.00
Certified or Uncertified Copy of Office Records, Per Document Except as Otherwise Provided in this Section	\$25.00
For Assignment Records, Abstract of Title and Certification, Per Patent	\$25.00

Due to the range of fees involved, the USPTO cannot precisely estimate the cost associated with these requests for copies. On average, the USPTO believes that these requests will most likely contain the certified or uncertified copy of the paper portion of patent application as filed processed within seven calendar days, the file wrapper and paper contents of 400 or fewer pages, the additional fee for certification, the certified or uncertified copy of Office records, per document except as otherwise provided in this section, and for assignment records, abstract of title and certification, per patent. All of these items equal an average cost of \$295. The USPTO estimates that 250 requests will be received per year. Therefore, the USPTO estimates that the cost for requesting copies of documents will average \$73,750 per year.

Parties will incur additional costs if the documents they are requesting exceed 400 pages or if they request copies on compact disc of patent-related file-wrapper contents that were originally submitted on compact disc. These options total \$110, which can potentially add an additional \$27,500 to the cost burden for requesting copies. However, few cases require these additional costs. Thus, the USPTO believes that the average non-hour cost burden for requesting copies of documents from the USPTO will average \$73,750 per year.

In a contested case, if a party relies on a document or is required to produce a document that is in a language other than English, an English translation of the document and an affidavit attesting to the accuracy of the translation must be filed with the document. This incurs additional non-hour costs for the party to contract for a translation of the documents in question. Depending on the particular

circumstances, the documents to be translated can vary greatly in size. Firms that perform translation services do not have set fees for these services. The cost of translating a document is dependent upon the length of the document, the complexity of the document, whether the document is technical, and the languages that the document has to be translated to and from. Due to these variables, many firms require customers to submit the documents in question to the firm so that they can be reviewed and a price quote prepared. There are translation firms that deal specifically with translations of intellectual property. Due to all of these factors, however, the USPTO cannot precisely estimate the costs that parties may incur for these translations.

Based on experience, the USPTO believes that on average the documents to be translated will be 10 pages in length and that it will cost \$150 per page for the translation. The average total cost for a translation will be \$1,500 per document. BPAI estimates that it will receive 25 English translations per year. Multiplying the 25 English translation submissions by \$1,500 results in a total cost of \$37,500 per year. The USPTO estimates a total non-hour cost burden of \$37,500 per year for English translations of non-English language documents and affidavit. **Therefore, there is a total of \$111,250 in fees requesting certified and uncertified copies of documents used in contested cases and translation fees associated with this collection.**

The USPTO estimates that the total non-hour respondent cost burden for this collection, in the form of capital start-up and postage costs, filing fees, and other fees for copies and translations is \$2,207,783 (\$2,208 in thousands) per year.