58 Patent Practitioners

December 29, 2021

Via Reginfo and email Nicholas_A._Fraser@omb.eop.gov;
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Re: 0651-0035 information request, ICR Ref. 202110-0651-003, *Representative and Address Provisions*, 30-day notice at 86 Fed. Reg. 67692 (Nov. 29, 2021)

Dear Mr. Fraser and Ms. Hardy:

We write as 58 patent practitioners and others affected by the PTO's practices to respond to a number of omissions and misrepresentations in the PTO's Supporting Statement. The ICR should be granted a second six-month clearance. This time, OMB should expressly order the PTO to implement a number of reductions in burden that we have recommended in our past letters.

The PTO's past neglect of the Paperwork Reduction Act imposes ***$30 to $40 million per year*** an excess burden on the public. In an earlier ICR (March to May 2021), our letter of March 12 offered five specific recommendations to reduce this excess burden. On May 17, OIRA gave a 6-month approval, with instructions: "Public comments that were submitted will be carried over and continued to be considered during the renewal review." The May 2021 renewal seems to have been designed to give the PTO a "do over" to consider our five recommendations, and thereby "minimize the burden of the collection of information on those who are to respond" as required by 44 U.S.C. § 3506(c)(2)(B). In the intervening six months, the PTO has done ***nothing*** (at least nothing visible to applicants) to advance toward that minimization. The PTO's Supporting Statement is entirely silent on our recommendations and comments—it adopts ***none*** of them, and offers ***no*** explanation for rejecting them. In fact, the Supporting Statement ***doesn't even acknowledge the existence*** of our five burden-reduction recommendations. There is ***not a single word*** in the Supporting Statement to even acknowledge burden that could be reduced, and not a word responding to our five recommendations for reducing burden.

The signatories to this letter don't expect perfection. But we do expect something observable as progress, something that reflects the PTO's good faith effort to follow the law and to reduce unnecessary burden, and some response to comment.

And we expect the PTO to be ***truthful*** in its representations to OMB.

The PTO fails both expectations. The Supporting Statement ignores the most important public comments, mischaracterizes others in order to avoid responding to them, and misrepresents several cold facts.

OMB should do as it did in May[1]: give a six month clearance. Since the PTO now stands silent for a third time on the five recommendations from our March letter, OMB should infer that PTO does not object or disagree with them. Thus, the six-month clearance should be accompanied by a specific, non-discretionary order to implement the five recommendations.

Background—History of this ICR

This ICR governs a deceptively simple form: a power of attorney. This form is used when a patent applicant (either an inventor or a company) appoints an attorney (or patent agent) to conduct business with the PTO. It looks like a simple form.[2] But, even in the best of circumstances, a Power of Attorney requires significant "searching data sources" and "completing and reviewing the collection of information," cognizable under § 1320.3(b)(1)(vii) and (viii).[3] However, these best circumstances often are unrealized. Because the PTO has secret unwritten rules, and enforces both the written and secret rules apparently randomly, this simple form imposes disproportionate burden. One of the contributors to our May letter described Powers as "the bane of my existence."

In March to May 2021, ICR Ref. 202103-0651-001, the PTO estimated Powers of Attorney at 3 minutes each. In each of our letters,[4] we explained four things:

- The PTO enforces a number of secret rules. Secret rules create unpredictability and burden.
- PTO personnel review Powers of Attorney unpredictably, perhaps depending on the personal taste of the random individual PTO employee that happens to pick up a matter. Often, the problem gets fixed by simply resubmitting the identical

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[1] Notice of Action, https://www.reginfo.gov/public/do/DownloadNOA?requestID=325504 (May 17, 2021)

[2] One example is at https://www.uspto.gov/sites/default/files/documents/aia0080.pdf. The full list of power of attorney forms, and the guidance and instructions is at https://www.uspto.gov/patents/apply/forms/forms-patent-applications-filed-or-after-september-16-2012

[3] We listed out a long series of steps that go into a Power of Attorney in our May 2021 letter, and again in our November 8 60-day letter. Our 60-day letter of November 8, 2021 should be at https://www.reginfo.gov/public/do/DownloadDocument?objectID=116794600 but that URL has a zero-byte file instead of our letter. Our 60-day letter is at https://downloads.regulations.gov/PTO-P-2021-0047-0002/attachment_1.pdf The list of steps is in the November 8 letter at pages 3-7.

[4] 91 Patent Practitioners, *Comment letter on 0651-0035, Representative and Address Provisions, 60-day notice*, https://www.regulations.gov/comment/PTO-P-2021-0018-0002 (Mar. 12. 2021) at pages 7 and 23; 30-day letter at https://www.reginfo.gov/public/do/DownloadDocument?objectID=111262402 (May 1, 2021); 60-day letter (see note 3, *supra*).

document—but the time it takes to confirm that the document is correct, and can be resubmitted, creates immense paperwork burden.

- We gave five recommendations for reforms that would reduce paperwork for this Collection by about a third.
- The PTO's estimates per response in March and May were facially absurd, low by a factor of 30.

Our 30-day letter of March 12, 2021 offered the consensus of 91 patent attorneys as two sets of estimates, and we set out our underlying assumptions:[5]

Including all cases, typical and atypical, with all our five recommendations for reduction of burden implemented	• 0.25 hours (15 minutes) of paraprofessional/paralegal time • 0.5 hours (30 minutes) of attorney or agent time; • 18 minutes of client time
Including all cases, typical and atypical, under the PTO's *status quo* unpredictable practices	• 0.4 hours (24 minutes) of paraprofessional/paralegal time • 1 hour of attorney time (that is, 30 minutes of incremental burden are due entirely to the PTO's secret rules and haphazard practices). • 0.3 hour (18 minutes) of client time, at a rate appropriate for professionals

The PTO went forward with its flawed estimates, by filing ICR 202103-0651-001 on April 6, 2021. The PTO's April 2021 Supporting Statement maintained the estimates of 3 minutes per Power of Attorney, and strenuously defended that estimate.

Via *ex parte* communications between OIRA and PTO in May 2021, the PTO apparently negotiated a temporary clearance, and on May 14, 2021, filed a replacement Supporting Statement. The public had no notice of, insight into, or participation in this *ex parte* phase of OIRA's conversation with the PTO.

OIRA's Notice of Action[6] of May 17, 2021 grants a conditional and temporary approval:

> Approval granted for 6 months, USPTO should resubmit for the full 3-year renewal request. Public comments that were submitted will be carried over and continued to be considered during the renewal review.

In this ICR, the PTO acknowledges that its earlier estimate of 3 minutes, so strenuously defended in April, is now wrong. The PTO now offers these estimates:

Including all cases, typical and atypical, under the PTO's *status quo* unpredictable practices	0.5 hours (24 minutes) of paraprofessional/paralegal time at $149/hr, ***zero*** attorney time, ***zero*** client time

There are three problems.

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[5] https://www.regulations.gov/comment/PTO-P-2021-0018-0002 at page 23.

[6] https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202103-0651-001#

First, the PTO's estimates are not remotely plausible. The PTO claims that "USPTO has adjusted the burden rate to account for both paralegal and attorney time"—while estimating attorney time at **zero**. That is implausible. Note that the PTO's estimate ($74.50) is only about a third of the burden we estimate for ***the excess*** caused by the PTO's own secret rules and upredictability (0.5 hours of attorney time, at $435/hr, $217.50). The PTO's estimates are still more implausible as estimates of the total "time, effort, and cost [it will] take for the respondents to locate, gather, and compile necessary documentation," and submission—and then diagnosis and resubmission after PTO error.

Second, the PTO's estimates are unsupported. Despite an obligation to provide a "record" of "objective support" for its estimates,[7] the Supporting Statement offers nothing more than personal opinion: USPTO "reiterates that the current estimates (now in the 0.5 hour range) reasonably account for the average user experience with submission of these items." The PTO identifies no source for this estimate, no record, no "objective support,"[8] let alone information with Information Quality objectivity and reproducibility. The PTO offers no reason to disagree with the consensus estimate of 91 knowledgeable attorneys. The Supporting Statement does not claim that the PTO "consulted with members of the public," 44 U.S.C. § 3506(c)(2)(A) to derive or confirm its estimates. For all that appears in the Supporting Statement, the PTO's estimates are based on no more than hope, and a refusal to recognize the costs that its own haphazard practices impose on the public.

Third, the PTO has done ***nothing*** to reduce the excess burden we identified, and ***nothing*** to implement our five recommendations.

Facts accumulated during the last nine months—secret rule obtained by FOIA

Since our letter of March 12, 2021, the facts have continued to develop—

- The PTO still relies on secret rules that are not published in the Federal Register, not available on the PTO's guidance portal, not available on the PTO's web site, and not obtainable via a google search. Signatories of this letter obtained a 2013 guidance document that governs powers of attorney, labeled "internal use ONLY."[9] We requested all updates by FOIA. After eight months, the PTO produced ***nothing***. We sued in Virginia district court. Faced with a law suit, on December 17, the PTO finally produced one page, still labeled "Internal use ONLY" (see Appendix 1). A diligent search of all sources suggests that the rules in this document are entirely secret, and cannot be found even if one knows that the document exists. No party before the Office can know the rules that the PTO actually applies, because the PTO keeps them ***secret***.
- This document demonstrates the irrationality of the PTO's secret rules. The two columns reflect no practical understanding of corporate law principles, common business practices, or titles. For example, "Managing Member" is listed as "not

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[7] 5 C.F.R. § 1320.8(a)(4); *see also* 44 U.S.C. § 3506(c)(1)(A)(iv).

[8] See note 7, *supra*.

[9] November 8 60-day letter, https://downloads.regulations.gov/PTO-P-2021-0047-0002/attachment_1.pdf at pages 11-12.

adequate apparent authority." Any competent lawyer knows that "Managing Member" of an LLC is roughly the equivalent of "CEO and Chairman of the Board" of a corporation. No respondent to a PTO information collection could possibly predict that using the entirely proper and perfectly conventional title "Managing Member" will cause the PTO to refuse a Power of Attorney. Nor can any reasonable lawyer know what to substitute, because no published written rule covers this. Applicants are left to guess. The PTO's secret rules create a quandary: if "Managing member" is in fact the legal title of the person signing the document, and every lawyer knows that this title is sufficient to state signature authority, does the practitioner use the actual title and fight it out with the PTO, or does one guess at an alternate title that might satisfy the intake clerks? Is this a misrepresentation that will trigger an investigation by the PTO's ethics office?

- Similarly, "Owner," "Delegation on behalf of" a valid signatory, and "Partner" are titles that typically carry signature authority. Conversely, "Director" of a typical industrial corporation typically does not ("Director" typically has a different meaning in financial services firms and *does* typically carry signature authority; the guidance does not reflect that difference). No reasonable person could predict the irrational basis on which the PTO will accept or refuse Powers of Attorney. This has gone on for years, simply because the PTO holds the Appendix 1 document secret. The public can't request correction of an irrational guidance document that the PTO holds secret.
- Nothing has changed to reduce the excess burden we identified in our earlier letters. There have been no notices in the Federal Register or other guidance to publish the PTO's secret rules, and no observable regularization of the PTO's unpredictable procedures. The 60-day notice mentions no implementation or reform efforts by the PTO. If any internal reforms were undertaken, the external effects are not visible.

Errors in the Estimates in the PTO's Supporting Statement

The PTO's Supporting Statement gives estimates of 30 minutes of paralegal time (at $145), and **zero** attorney time, per response for Table 3, lines 1-5. There are multiple errors:

1. Why does the PTO include **zero** burden for the attorney/agent, only paralegals? Attorneys/agents need to be involved: it requires an attorney's judgment (not a paralegal's) to decide who the proper named party is, and who is a proper signatory.[10] This is now the fourth letter in which we raise this issue; the Supporting Statement claims to have properly accounted for attorney time by estimating it at zero. All alone, this results in an underestimate by a factor of three (because of the difference between attorney billing rates and paralegal billing rates). Everybody makes mistakes, but repeating the same mistake four times

[10] As we noted in our letter of March 12, https://www.regulations.gov/comment/PTO-P-2021-0018-0002 at page 5, the PTO's Office of Enrollment and Discipline disciplines lawyers that turn over too much to paraprofessionals/paralegals.

requires ***intent***. OMB may reasonably infer that the PTO's underestimate of hourly burden is intentional.

2. Why has the PTO included no burden for the client?[11] Table 4, lines 1-5, include burden for 5200 individuals. This is plainly wrong: ***every single*** one of the 170,000 Powers of Attorney in Table 3, lines 1-5 have to be reviewed by and signed by an "individual." That's the whole point of a Power of Attorney—only an authorized principal (an individual) can appoint an agent to act as attorney; a paralegal can't. Clients spend time on Powers of Attorney. Clients want to know what they're signing, so they read them. Occasionally they ask the attorney to explain. Then the simple ministerial tasks of printing, signing, and then scanning or mailing take time that falls within the definition of "burden" and "information" of § 1320.3(b) and § 1320.3(h)(1). This is now the fourth letter in which we raise this issue; the Supporting Statement is silent. OMB may reasonably infer that the PTO is ***intentionally*** ignoring a significant fraction of burden.
3. What is the "objective support"[12] for these estimates? The PTO's estimates depart substantially (by over a factor of three) from the consensus estimate of knowledgeable attorneys who prepare these documents day in and day out. The Paperwork Reduction Act and its implementing Information Collection Regulations requires that estimates be "objectively supported." In its *Information Quality Guidelines*,[13] the PTO bound itself (for "influential" information such as this) to only rely on information that is "objective," "reproducible," and has "integrity." The PTO discloses no source whatsoever for its estimate. Because of that, the PTO's estimates fail all three requirements for information quality, and fail the "objective support" requirement of law. Our three previous letters all questioned the objective support for of the PTO's estimates; OMB may infer intentional defiance of law in the PTO's failure to provide a "record" or "objective support."[14]
4. The PTO's estimates apparently cherry pick only routine cases; the time to correct problem-fraught outliers skews the averages substantially, as we explained in our March 2021 letter. Considering only cherry-picked best case scenarios is invalid estimation methodology.
5. We offered two sets of estimates: one for the *status quo* if the PTO implements no reforms, one if the PTO implements all of them. The PTO uses something close to the low "reformed" numbers, but uses them to estimate the "unreformed" PTO practice. That internally-contradictory mix-and-match approach is not legally supportable.

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[11] Table 4, lines 1-5, include burden for 5200 individuals. This is plainly wrong

[12] See note 7, *supra*.

[13] https://www.uspto.gov/learning-and-resources/information-quality-guidelines

[14] 44 U.S.C. § 3506(c)(3); 5 C.F.R. § 1320.8(a)(4); § 3506(c)(1)(A)(iv).

Other Legal Deficiencies in the PTO's Supporting Statement

6. OMB's Notice of Action of May 17 directs PTO to "continue[ ] to [ ] consider [public comments from March and May] during the renewal review." The PTO's 60 Day Notice (86 Fed. Reg. 50086, (Sep. 7, 2021)) and this November Supporting Statement contain ***not a word*** "considering public comments" relating to five specific recommendations the PTO could take to reduce burden. This is now the fourth round of review for this Control Number. The five burden reduction recommendations are squarely stated in our 60-day letter of March 12, 2021,[15] and the PTO has been given two reminders in subsequent letters, plus OMB's Notice of Action. OMB may reasonably infer that the PTO is ***intentionally*** ignoring burden that it creates, ***intentionally*** defying OMB's order to even "consider" public comments, and ***intentionally*** refusing to act to reduce burden. The consequence is $30 to $40 million in burden that is both unnecessary and underestimated.

7. In the May 2021 Supporting Statement, the PTO promised to "plan further consultation with a range of respondents." The November 2021 Supporting Statement likewise promises "the USPTO is planning further consultation with a range of respondents to verify current burden estimates as part of a long term, multi-year effort to understand user experiences and the public burdens." Neither the May 2021 Supporting Statement nor the September 7 60-day Notice nor the November Supporting Statement claim that any such *consultation actually occurred*. The PTO also claims to have "longstanding relationships" with "groups such as the American Intellectual Property Law Association (AIPLA), as well as patent bar associations, independent inventor groups, and users of our public facilities" but makes no claim to have *actually consulted* with any of them. The law requires agencies to *actually* consult before the 60-day notice, 44 U.S.C. § 3506(c)(2)(A); § 3507(h)(1)(A) and (B), and to provide a record of that consultation, not just "plan" to consult, or maintain unspecified "relationships," or consult in secret with no record of the consultation. If any consultation occurred, undocumented anecdote can't substitute for the burden estimates developed under fully-disclosed assumptions, with two statements of consensus of the lawyers that signed on to two letters.

8. Likewise, the law is clear that the March 2021 60-day and September 2021 60-day comment period is part of that consultation. Our two 60-day letters were joint work product of roughly a dozen active contributors, most of whom provided anecdotes, all of whom gave their approval to the consensus estimates stated at page 7 of the letter.[16] There were 91 total co-signatories. The March 60-day comment letter offered three sets of estimates, one of which reflects the full range of experience with outlier cases caused by the PTO's unpredictable, unwritten enforcement

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[15] 91 Patent Practitioners, *Comment letter on 0651-0035, Representative and Address Provisions, 60-day notice*, https://www.regulations.gov/comment/PTO-P-2021-0018-0002 (Mar. 12. 2021) at pages 7 to 23.

[16] Many anecdotes to support the estimates were provided in our 60-day letter in March, and more in the Exhibits to our 30-day letter. See footnote 4.

standards and cost-shifts onto the public. The PTO offers no basis to discount the March 2021 estimates. The PTO does not contest that its unwritten and inconsistent enforcement practices result in "outliers" that drive the average to the high estimate.

9. The PTO does not contest the showings we made in our letters, that the PTO does ***not*** operate under "plain, coherent, and unambiguous terminology … understandable to those who are to respond." Secret rules are not "plain," "unambiguous," or "understandable."

10. As Exhibits 1, 2, 3, and 4 to our May letter, we included notices the PTO gives when it bounces a Power of Attorney. They are often misleading, often just plain wrong. Trying to identify the actual reason for the bounce is ***immensely*** burdensome. The PTO does not contest the burden created by its own secret rules, and its own random practices. The PTO does not offer any reform.

11. In the November 29 Supporting Statement, the PTO characterizes one of the comments as "issues related to a couple of Freedom of Information Act (FOIA) requests." The issue actually stated in the letter was existence of secret, unpublished rules, rules that can't even be ascertained by FOIA requests. Because the PTO mischaracterizes the comment, the PTO does not dispute that it has secret rules that violate the requirement that all requests for information use "plain, coherent, and unambiguous terminology … understandable to those who are to respond" and that contribute to the $30 to $40 million per year an excess burden on the public that we identify in our letters.

12. In the November 29 Supporting Statement, the PTO writes:

> Regarding the commenters [sic] concerns about repeated rejections of Power of Attorney submissions, the USPTO's customer support hotlines and public interactions have not indicated any problems with improper dismissals of Powers of Attorney. The USPTO is otherwise unaware of any user experiences which would corroborate the commenter's allegations of repeated dismissals.

(a) This is at best misleading, if not outright false. Attorneys regularly raise these issues on email lists, to seek help because the PTO's customer support hotlines are remarkably unhelpful. (a) The PTO's customer support hotlines (which the PTO calls the "Application Assistance Unit") are generally not helpful, because the people staffing those hotlines are not the people who actually rejected the powers of attorney and are not in direct contact with the people who rejected the powers of attorney, and thus merely guess at the reasons for rejection. They often express the same puzzlement we have and cannot diagnose a problem—a common suggestion is to simply submit the same paper again. (b) It seems most likely that the PTO's "hotlines and public interactions" are not collected and consolidated in a way that would reveal a problem. The PTO does not represent otherwise; the PTO relies on information that fails Information Quality principles. The most likely explanation for the PTO's statement is that the PTO's quality assurance processes are deficient. (c) The PTO's explanation is irrelevant. The public comment letters point out the problem. That's the purpose of public comment periods. 91

attorneys do not engage in a group fiction. The PTO can't ignore a problem that it hasn't investigated, just because it comes up in public comment letters.

One of the signatory attorneys notes:

> The alleged lack of calls to the USPTO's so-called "hotlines" supposedly evidencing a lack of problems is particularly ironic. My experience with the "hotlines" is that it typically requires a great deal of time because I'm typically transferred numerous times before (if I'm lucky) reaching someone who can answer the question. In short, I dread calling the hotlines and only do it as a last resort due to the time it entails (The employees are typically friendly and they do try to be helpful. It's not my intention to disparage the individual employees who are trying but simply don't know)."

The PTO's "hotlines" are always immensely time consuming (hold times, transfers, etc.), and often give wrong advice. The PTO's reliance on its "hotlines" demonstrates the danger of the PTO's reliance on information that fails Information Quality principles.

13. Most importantly, ***the PTO has taken none of the practicable and appropriate steps to reduce burden*** that we proposed in March, in violation of 44 U.S.C. § 3506(c)(3)(C). Our March 12 letter proposed five recommendations for the PTO's enforcement practices that could reduce burden on the public by $30 to $40 million per year, if the PTO simply honored its own written regulations, rather than enforcing unwritten and varying preferences. Neither the PTO's May 2021 Supporting Statement nor the September Federal Register notice even acknowledge those recommendations, and no Federal Register notice has surfaced to demonstrate the PTO's intent to act on them. Until that Federal Register notice appears, we urge that OIRA should adopt the higher estimates.

Everyone makes mistakes. Once. When such errors are caught, honest and competent people review their methodological procedures to ensure that the mistakes are not repeated. This is now the fourth letter on the same topic. OMB may infer that there is no innocent explanation for a long list of ***repeat*** methodological mistakes.

Certifications

The PTO certified to the following:

- Each collection of information is necessary for the proper performance of the functions of the agency, including that the information has practical utility (44 U.S.C. § 3506(c)(3)(A); 5 C.F.R. § 1320.9(a)). Neither secret and irrational rules nor haphazard and random processing of Powers of Attorney are "necessary." The PTO's certification is false.
- Each collection of information is not unnecessarily duplicative of information otherwise reasonably accessible to the agency (§ 3506(c)(3)(B); § 1320.9(b)). Repeated filing of the same Power of Attorney due to secret and irrational rules, and haphazard and random processing is "unnecessarily duplicative." The PTO's certification is false.
- That the collection of information reduces burden on small entities. § 3506(c)(3)(C). A substantial fraction of patent attorneys and agents that submit

Powers of Attorney are "small entities." Likewise, small entity clients tend to use powers of attorney at a higher rate than large entities (large entities tend to have in-house patent counsel). The PTO has made no effort to make Powers of Attorney unburdensome for small entities by making them predictable. The PTO's certification is false.

- Each collection of information 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 (§ 3506(c)(3)(C); § 1320.9(c)), including through clarification, consolidation, or simplification of compliance and reporting requirements. Repeated filing of the same Power of Attorney due to secret and irrational rules, and haphazard and random processing by the PTO are inconsistent with a certification of that the PTO "reduces [burden] to the extent practicable." The PTO's certification is false.
- Each collection of information is written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond (§ 3506(c)(3)(D); § 1320.9(d)). The unwritten standards that we have located by accident, and have sought to confirm by FOIA, are not "plain, coherent, and unambiguous," and are not "understandable" to those that haven't seen them because the PTO didn't publish them when required to do so. The PTO's certification is false.
- Each collection of information is implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond (§ 3506(c)(3)(E); § 1320.9(e)). The PTO's rules for electronic signatures are idiosyncratic, different than the conventions used throughout the private sector. The PTO's certification is false.
- Each collection of information has been developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected, including the processing of the information in a manner which shall enhance, where appropriate, the utility of the information to agencies and the public (§ 3506(c)(3)(H); § 1320.9(h)). Inconsistent processing of Powers of Attorney by the PTO's clerical staff is not "enhancement" of practical utility to the agency or to the public. The PTO's certification is false.
- Each collection of information, to the maximum extent practicable, uses information technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public (§ 3506(c)(3)(J); § 1320.9(j)). Information technology that *increases* burden is not within the law. The PTO's certification is false.

Our November 8 letter had nearly the same bullet list as above, framed as prospective warnings to PTO of potential falsehoods. Despite clear warning, the PTO brazenly falsified its certifications anyway. OMB may infer that that falsified certifications are intentional. OIRA acts as an *ex parte* tribunal, and thus ABA Model Rule and Virginia Rule of Professional Responsibility 3.3 apply to any certifications that the PTO offers. OMB may choose to report the PTO's pattern of false certification to the Virginia State Bar.

Conclusion

The most important of the "four questions" of § 3506(c)(2)(A) are questions (iii) and (iv), how the PTO can "enhance utility" and "Minimize the burden of the collection of information on those who are to respond." Our previous letters emphasized our response to question (iv). The impression conveyed by the PTO's November 2021 Supporting Statement is that the PTO doesn't take question (iv), paperwork ***reduction***, or the public's recommendations seriously.

In April 2021, the PTO insisted that its estimates of 3 minutes were sound. The PTO now acknowledges that those estimates were off by a factor of ten. The PTO's new estimates are still low by a factor of five, and there's nothing in the Supporting Statement to suggest that PTO's has sought to improve the flawed estimation methodology it used in March and April. Indeed, this Supporting Statement evidences a commitment to *evading* the rule of law.

And most importantly, the PTO's nonimplementation of Paperwork Reduction principles imposes $30 to $40 million per year an excess burden on the public.

As we wrote in May 2021, there are two lawful dispositions for Table 3, rows 1-5:

- The PTO should run a notice in the Federal Register stating:
  (a) enforcement of all requirements above the literal text of the applicable regulations will end forthwith,
  (b) all five recommendations we offered in our 60-day letter of March 12 are adopted and will be implemented forthwith, and
  (c) the PTO will take identified, concrete steps to ensure implementation, and the name of a contact person with authority to ensure compliance with the PTO's commitments and obligations under law.

  If the PTO publishes this notice, the ICR should be cleared at our "medium" estimate: 0.25 hours of paraprofessional/paralegal, 0.5 hours of attorney time, 0.3 hours of client time.
- The PTO can maintain the *status quo* of unpredictable enforcement. In that case, the higher estimates (page 23 of our March letter) apply. However, the PTO's certifications of "necessary for the proper performance of agency function," "reduces burden on small entities," and "uses plain, coherent, and unambiguous language that is understandable to respondents," and claims of information quality are false, and the PTO's non-compliance with the requirement "not [reduce its own costs] by means of shifting disproportionate costs or burdens onto the public" (5 C.F.R. § 1320.5(d)(1)(iii)) is unlawful,

This ICR should either be returned without approval, or the PTO should be given another six-month approval, with explicit and non-discretionary instructions to implement the five recommendations from our March 12, 2021 letter.

Respectfully submitted,

58 Patent Practitioners

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Appendix:

Appendix 1: “Acceptable Apparent Authority / Not Acceptable Apparent Authority” guidance, produced via FOIA request F-21-00084

Appendix 1

“Acceptable Apparent Authority / Not Acceptable Apparent Authority” guidance, produced via FOIA request F-21-00084

Acceptable Apparent Authority	Not Acceptable Apparent Authority
Authorized and a title following it (Officer, Official, Representaitve, Signatory, Signer, etc.)	Administrator
Chairman, abbreviations and variations of this title (Examples: Chrmn., Company Chairman, Executive Chairman, Chariman of the Board, Vice-Chairman of the Board of Directors)	Attorney (Examples: Attorney in Fact, Principle Attorney, Senior Attorney, Corporate Attorney)
Chief Executive Officer or CEO	Counsel and all variations of Counsel, unless combined with an Officer title (Examples: Chief Patent Counsel, IP Counsel, Patent Counsel, Patent Procurement Counsel, Senior Corporate Counsel, Supervisory Patent Counsel)
Chief Financial Officer or CFO	Delegation on behalf
Chief Operating Officer or COO	Engineering leader
Chief Scientific Officer or CSO	Founder
Chief Technical Officer or CTO	Intellecual Property Manager, IP Manager
Dean of University	IP Attorney (Other Examples: IP Fellow, IP Patent Manager, IP Professional)
Director (in non-US applications only), variations and abbreviations of Director (Dir., Assistant Director, Associate Director, Executive Director, Managing Director)	Legal Representative (Note: Legal rep CAN be acceptable where the legal rep is an applicant, but not when used by a non-applicant)
Executive Vice President and Patent Counsel	Managing Member
General Counsel and Corp secretary	Owner
General Manager or GM	Partner
Geschaffsfuhrer (non-English title) (This means CEO or Managing Director)	Patent Agent, Patent Attorney, Patent Executive, Patent Professional, Patent Team Leader
Manager	Principal Engineer
Officer	Principle, Principle Attorney, Principle Professional
President, variations and abbreviations of President (e.g., Pres., Assistant President, President of Operations)	Proxy
Secretary, variations and abbreviations of Secretary (examples: Assistant Secretary, Asst. Sec., Corporate Secretary)	Representative
Treasurer, abbreviations and variations of Treasurer (examples: Treas., Assistant Treasurer, Treasurer of Sales)	Researcher
Vice President, abbreviations and variations of Vice President (examples: VP, Vice President for Sales, Executive Vice President, EVP)	Senior IPR specialist
Revised April 2016 (Internal Use ONLY)	Technical Developer