

From: Sergey Vernyuk [mailto:SV@etblaw.com]
Sent: Monday, June 29, 2015 1:14 PM
To: Information Collection
Subject: 0651-0017 comment

Dear Sir or Madam,

On June 19, 2015, the U.S. Patent and Trademark Office (USPTO) published a proposed collection comment request for practitioner conduct and discipline ("Request"). 80 Fed. Reg. 35318. The OMB Number for this Request is 0651-0017. The Request requested written comments and recommendations for the proposed information collection. I am a patent attorney registered with the USPTO (no. 71283) and hereby submit my comments, which represent my personal views.

I. Comments on Information Collection

A. Recommendation on § 11.25(a)

37 C.F.R. § 11.25(a) requires a registered practitioner to notify the USPTO upon being convicted of a crime (state, federal, or foreign). A "crime" is defined by 37 C.F.R. § 11.1 as any offense declared to be a felony or misdemeanor in the jurisdiction where the act occurs. The regulation implementing § 11.25(a) discussed comments received regarding the rule. 73 Fed. Reg. 47650 (Aug. 14, 2008). Comment 41 suggested that the reporting requirement of § 11.25(a) is too broad and suggested excluding traffic violations from the reporting requirement. 73 Fed. Reg. 47677. The USPTO declined to narrow the reporting requirement, explaining that the USPTO must have available the information necessary to determine a practitioner's moral character and fitness. *Id.* I ask the USPTO to reconsider § 11.25(a) and to exclude minor traffic violations from the reporting requirement.

Several USPTO forms requesting violation information exclude traffic violations. For example, forms PTO-107A, PTO-107R, PTO-107RR, and PTO-107S (OMB No. 0651-0012) ask if the applicant has been convicted of a felony or misdemeanor (*other than a traffic violation*) in the past five years. Another form in OMB Number 0651-0012, form PTO-158, asks if the applicant has ever been arrested, charged, or held for any violation of any law, regulation, or ordinance (*other than any traffic violation for which the fine was \$100 or less*). These forms evidence the USPTO's belief that it does not need information about a practitioner's traffic violations. These forms are used to register or reinstate a practitioner. However, it is not clear why the USPTO does not need traffic violation information to register a practitioner but then needs this information after the practitioner has been registered. By excluding traffic violations from the forms, the USPTO indicates that information regarding traffic violations is not necessary for the USPTO to determine a practitioner's moral character and fitness to practice.

B. Comments on Specific Topics

The Request asks for comments on four topics. 80 Fed. Reg. 35320. With respect to topic (a), I do not believe (and apparently neither does the USPTO) that traffic violation information is necessary for the proper performance of the functions of the USPTO. In Ohio, for example, parking violations are misdemeanors, as is driving in the rain without headlights turned on. See Ohio Rev. Code §§ 4511.68, 4511.69, 4513.03; Cleveland Code of Ordinances § 451.241. It is difficult to imagine why the USPTO would need such information to properly function. Because many traffic violations are strict-liability violations, a person can commit one even without any negligence (sometimes through just bad luck). Such minor infractions do not reflect a practitioner's moral character and fitness to practice. See 37 C.F.R. § 11.803(a) (requiring reporting of violations only when they raise a substantial question as to the practitioner's honesty, trustworthiness, or fitness to practice).

With respect to topic (d), the burden of the information collection can be reduced by excluding traffic violations from the reporting requirement. Because traffic violations are generally minor, a practitioner

might not realize that he is obligated to report such a minor and insignificant violation. Indeed, from informally polling several practitioners, many are not even aware that traffic violation misdemeanors need to be reported to the USPTO. After receiving a traffic citation, most probably just pay the fine (which requires a guilty plea) and forget the otherwise-insignificant incident, forgetting to notify the USPTO. Carving out minor traffic violations from the reporting requirement would ease the burden on practitioners because they would not need to report such minor violations.

With respect to topic (c), the quality, utility, and clarity of the collected information would improve if minor traffic violations were excluded. Because many (if not most) practitioners probably are not aware of the requirement to report even minor traffic violations - and because many probably don't - the information that the USPTO has is incomplete and thus inaccurate. If traffic violations are to be considered in evaluating the character and fitness of a practitioner, the USPTO probably does not have complete information on such violations, which renders the information it does have incomplete, of poor quality, and not very useful. By removing traffic violations from the reporting requirement, the quality of the overall violation collection would improve because it will probably be more complete and accurate.

Thus, I recommend that the USPTO revise § 11.25(a) to exclude traffic violation convictions from crimes that are required to be reported, as was suggested in the above-mentioned Comment 41.

II. OMB Number Covering § 11.25(a)

On September 8, 2014, the U.S. Patent and Trademark Office (USPTO) published a Notice of Submission for OMB Review and Comment Request ("Notice") under Agency Approval Number 0651-0012 (ICR Ref. No. 201407-0651-003). 79 Fed. Reg. 53174. That Notice indicated that, among other reasons, the USPTO uses the information in this collection to determine whether an existing practitioner may remain on the Register of Patent Attorneys and Agents. The Notice requested written comments and recommendations for the proposed information collection. In response to the Notice, I submitted on September 10, 2014, the same recommendation to amend § 11.25(a) that I make here.

In the November 2014 Supporting Statement to OMB Control No. 0651-0012 (ICR Ref. No. 201407-0651-003), the USPTO acknowledged my comments (p. 8) but stated that that collection is not the appropriate forum for my comment. Therefore, I am resubmitting these comments under the subject OMB Number (0651-0017). The subject OMB Number 0651-0017 covers practitioner conduct and discipline. The Request discusses the practitioner's responsibility to report violations to the USPTO. 80 Fed. Reg. 35318. IC No. 3 in the Request is for "Complaint/Violation Reporting." Therefore, I believe that the subject Request is the proper forum for my comment.

If this OMB No. 0651-0017 is not the appropriate OMB Number for § 11.25(a), then there does not appear to be any other OMB Number that covers § 11.25(a). If so, then it would seem that § 11.25(a) requests information in violation of the Paperwork Reduction Act because the USPTO does not regularly submit the collection under § 11.25(a) for OMB's review after public comment. If that is the case, then no persons are required to respond to the collection of information of § 11.25(a).

I note that the Notice of Office of Management and Budget Action for OMB No. 0651-0017 dated April 3, 2013, (ICR Ref. No. 201304-0651-001) does not list § 11.25(a) under CFR Citation in the List of ICs table. Neither does the Notice of Office of Management and Budget Action for OMB No. 0651-0012 dated December 23, 2014 (ICR Ref. No. 201407-0651-003). It seems that § 11.25(a) should be listed in OMB No. 0651-0017 for the "Complaints/Violation Reporting (including Grievances)" IC.

III. Request Under 5 U.S.C. § 553(e)

If the USPTO determines that it cannot amend § 11.25(a) just on the basis of the Request and the comments submitted in response, I respectfully request per 5 U.S.C. § 553(e) the USPTO to amend § 11.25(a) to remove minor traffic violations from the list of "crimes" that must be reported by practitioners to the USPTO. The excluded violations could be defined as traffic violations for which the fine is \$100 or less (as already used in form PTO-158) or perhaps \$200 or less (to account for any fine inflation since

form PTO-158 was last revised). If desired, perhaps other tailoring of the reporting exclusion could be done to eliminate minor violations that do not reflect on the character or fitness of practitioners; the exclusion of traffic violations with a fine below a certain threshold seems like a good start.

Also, if § 11.25(a) is to be amended, it may make sense to move the reporting provision from § 11.25(a) to § 11.803, which covers reporting violations.

Thank you for your consideration,



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