

RICHARD BURTON BELZER, PHD

PO. Box 319
Mount Vernon, VA 22121
rbelzer@post.harvard.edu

5 June 2013

Mr. Nicholas Fraser
Desk Officer, U.S. Patent & Trademark Office
Office of Information and Regulatory Affairs
Office of Management and Budget
Washington, DC 20503

Subject: [ICR Reference No: 201305-0651-002](#) (USPTO “Grace Period Study”)

Dear Nick:

According to the abstract posted by the U.S. Patent and Trademark Office for this new Information Collection Request, the PTO “created this survey to obtain current, qualitative data on the effects of premature disclosure on European patenting.” Two Supporting Statements also were uploaded.¹

The USPTO expects 420 respondents will spend a total of 71 hours providing this information. According to the Supporting Statement, the average respondent burden is said to be 10 minutes and includes answering 15 questions. This includes “reading the instructions for the survey, gathering the necessary information, completing the survey, and submitting it to the USPTO.”² None of the 15 questions is included in the Supporting Statement, so it is not possible to evaluate their substantive practical utility or respondents’ ability to provide quality information so inexpensively.

USPTO has hired a contractor, the International Intellectual Property Institute (IIPi),³ to conduct this survey on its behalf. According to the Supporting Statement, IIPi plans to “survey approximately 3,000 scientific researchers affiliated with selected European universities who have published journal articles disclosing potentially patentable materials.”⁴

¹ U.S. Patent and Trademark Office. “Supporting Statement, Part A: Grace Period Study, OMB Control Number 0651-00xx (May 15, 2013),” 2013a, _____. “Supporting Statement, Part B: Grace Period Study, OMB Control Number 0651-00xx (May 15, 2013),” 2013b.

² ____ (2013a, 6). How this not burden estimate was derived is not disclosed. “These estimates are based on the Agency’s long-standing institutional knowledge of and experience with the type of information collected and the length of time necessary to complete responses containing similar or like information.”

³ International Intellectual Property Institute, <http://iipi.org>.

⁴ U.S. Patent and Trademark Office (2013b, 1). The Supporting Statement does not explain why “scientific researchers affiliated with selected European universities” is the appropriate sample frame.

The proposed survey methods are technically problematic and extremely unlike to satisfy OMB statistical policy guidelines.⁵ In particular, Standard 1.3 and its accompanying guidelines do not appear to be met:

Section 1.3 Survey Response Rates

Standard 1.3: Agencies must design the survey to achieve the highest practical rates of response, commensurate with the importance of survey uses, respondent burden, and data collection costs, to ensure that survey results are representative of the target population so that they can be used with confidence to inform decisions. Nonresponse bias analyses must be conducted when unit or item response rates or other factors suggest the potential for bias to occur.

Guideline 1.3.1: Calculate sample survey unit response rates without substitutions.

Guideline 1.3.2: Design data collections that will be used for sample frames for other surveys (e.g., the Decennial Census, and the Common Core of Data collection by the National Center for Education Statistics) to meet a target unit response rate of at least 95 percent, or provide a justification for a lower anticipated rate (See Section 2.1.3).

Guideline 1.3.3: Prior to data collection, identify expected unit response rates at each stage of data collection, based on content, use, mode, and type of survey.

Guideline 1.3.4: Plan for a nonresponse bias analysis if the expected unit response rate is below 80 percent (see Section 3.2.9).

Guideline 1.3.5: Plan for a nonresponse bias analysis if the expected item response rate is below 70 percent for any items used in a report (see Section 3.2.9).

According to the Supporting Statement, USPTO and IIPi expect a response rate of only 14%. The Supporting Statement incongruously characterizes this expected response rate as “high,” and further commends it apparently because “a similar survey of German researchers conducted by the German Ministry for Education and Research (BMBF)” achieved a similar rate.⁶

It is highly unlikely that such a low response rate complies with Standard 1.3’s requirement to “achieve the highest practical rates of response,” unless the “importance

⁵ Office of Management and Budget. "Standards and Guidelines for Statistical Surveys," Washington, D.C.: Office of Management and Budget, 2006.

⁶ U.S. Patent and Trademark Office (2013b, 3, 1).

Mr. Nicholas Fraser
5 June 2013
Page 3 of 4

of survey uses, respondent burden, and data collection costs” are so low that the project has virtually no practical utility to the USPTO.⁷

Even if it were assumed that this survey qualitatively met Standard 1.3, it would fail to adhere to its related guidelines. The survey cannot achieve unit response rates of 80% or greater, or item response rates of 70% or greater. Further, the Supporting Statement acknowledges the problem of nonresponse only obliquely and includes no credible plan for conducting a nonresponse bias analysis, as Guidelines 1.3.4 and 1.3.5 require.⁸

In lieu of these required elements, the Supporting Statement includes a boilerplate sample size equation that cannot be used for evaluating the survey based on the limited information provided.⁹ There is simply no basis for the USPTO’s assertion in the Supporting Statement that “we will receive sufficient responses for us to state the survey’s conclusions with a margin of error of 5 percent at confidence level of 95 percent.”¹⁰

I am unable to discern from reading the Supporting Statement whether the proposed survey would adhere to other OMB Statistical Standards and Guidelines. Nonetheless, failure to comply with Standard 1.3 is by itself fatal, for the USPTO would be unable to credibly use results from this survey to draw any meaningful conclusions, much less use them to inform policy. For that reason, the Grace Period Study has no practical utility as proposed and thus cannot be approved.

The grace period is an important issue with respect to the competitiveness of the U.S. patent system compared with other national systems. Some reasons for this are set forth in a public comment on the USPTO’s 60-day Notice from William Hubbard, Assistant Professor of Law at the University of Baltimore School of Law,¹¹ keeping in mind that his views may not be representative (sample sizes equal to one rarely are). In any case, Professor Hubbard commends the USPTO for undertaking this study in the apparent belief that it is designed to yield information that could inform policy.

⁷ U.S. Patent and Trademark Office estimates the survey will cost \$149,000. See ____ (2013a, 7).

⁸ “In the case of nonrespondents, IPI plans to use a brief non-response follow-up to encourage response from them. IPI will attempt to redistribute the survey to nonrespondents. This may involve distributing the survey to nonrespondents’ alternate e-mail accounts. Demographic information of initial nonrespondents who respond to these redistributions will be compared to that of initial respondents.”

⁹ The text describing the equation identifies a sixth parameter—the estimated response rate—which is not included in the equation.

¹⁰ U.S. Patent and Trademark Office (2013b, 1).

¹¹ William Hubbard. "Comments on 'Grace Period Study'," 2013.

Mr. Nicholas Fraser
5 June 2013
Page 4 of 4

Unfortunately, that is simply not possible given the survey's abysmal expected response rate and the absence of serious concern for nonresponse bias.

Respectfully submitted,



Richard Belzer, PhD

CC: Dr. Katherine Wallman
Chief, Statistics and Science Policy Branch

References

- Hubbard, William.** "Comments on 'Grace Period Study'," 2013.
- Office of Management and Budget.** "Standards and Guidelines for Statistical Surveys," Washington, D.C.: Office of Management and Budget, 2006.
- U.S. Patent and Trademark Office.** "Supporting Statement, Part A: Grace Period Study, OMB Control Number 0651-00xx (May 15, 2013)," 2013a.
- _____. "Supporting Statement, Part B: Grace Period Study, OMB Control Number 0651-00xx (May 15, 2013)," 2013b.