

# Calendar No. 532

112TH CONGRESS  
2D SESSION

# S. 3486

To implement the provisions of the Hague Agreement and the Patent Law Treaty.

---

## IN THE SENATE OF THE UNITED STATES

AUGUST 2, 2012

Mr. LEAHY (for himself, Mr. GRASSLEY, and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

SEPTEMBER 20, 2012

Reported by Mr. LEAHY, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

---

# A BILL

To implement the provisions of the Hague Agreement and the Patent Law Treaty.

- 1       *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*
- 2       **SECTION 1. SHORT TITLE.**
- 3       This Act may be cited as the “Patent Law Treaties
- 4       Implementation Act of 2012”.

5 SEC. 101. THE HAGUE AGREEMENT CONCERNING INTER-  
6 NATIONAL REGISTRATION OF INDUSTRIAL  
7 DESIGNS.

8       (a) IN GENERAL.—Title 35, United States Code, is  
9 amended by adding at the end the following:

10 "PART V—THE HAGUE AGREEMENT CONCERNING  
11 INTERNATIONAL REGISTRATION OF INDUS-  
12 TRIAL DESIGNS

**“CHAPTER**  
**“38. International design applications .....**

# **“CHAPTER 38—INTERNATIONAL DESIGN APPLICATIONS”**

- “See.
- “381. Definitions.
- “382. Filing international design applications.
- “383. International design application.
- “384. Filing date.
- “385. Effect of international design application.
- “386. Right of priority.
- “387. Relief from prescribed time limits.
- “388. Withdrawn or abandoned international design application.
- “389. Examination of international design application.
- “390. Publication of international design application.

15 “§ 381. Definitions

16        "(a) IN GENERAL.—When used in this part, unless  
17 the context otherwise indicates—

1           “(1) the term ‘treaty’ means the Geneva Act of  
2       the Hague Agreement Concerning the International  
3       Registration of Industrial Designs adopted at Gene-  
4       va on July 2, 1999;

5           “(2) the term ‘regulations’—

6           “(A) when capitalized, means the Common  
7       Regulations under the treaty; and

8           “(B) when not capitalized, means the regu-  
9       lations established by the Director under this  
10       title;

11          “(3) the term ‘designation’ means a request  
12       that an international registration have effect in a  
13       Contracting Party to the treaty;

14          “(4) the term ‘International Bureau’ means the  
15       international intergovernmental organization that is  
16       recognized as the coordinating body under the treaty  
17       and the Regulations;

18          “(5) the term ‘effective registration date’ means  
19       the date of international registration indicated by  
20       the International Bureau under the treaty;

21          “(6) the term ‘international design application’  
22       means an application for international registration;  
23       and

1           “(7) the term ‘international registration’ means  
2       the international registration of an industrial design  
3       filed under the treaty.

4           “(b) RULE OF CONSTRUCTION.—Terms and expres-  
5       sions not defined in this part are to be taken in the sense  
6       indicated by the treaty and the Regulations.

7       **“§ 382. Filing international design applications**

8           “(a) IN GENERAL.—Any person who is a national of  
9       the United States, or has a domicile, a habitual residence,  
10      or a real and effective industrial or commercial establish-  
11      ment in the United States, may file an international de-  
12      sign application by submitting to the Patent and Trade-  
13      mark Office an application in such form, together with  
14      such fees, as may be prescribed by the Director.

15           “(b) REQUIRED ACTION.—The Patent and Trade-  
16      mark Office shall perform all acts connected with the dis-  
17      charge of its duties under the treaty, including the collec-  
18      tion of international fees and transmittal thereof to the  
19      International Bureau. Subject to chapter 17 of this title,  
20      international design applications shall be forwarded by the  
21      Patent and Trademark Office to the International Bu-  
22      reau, upon payment of a transmittal fee.

23           “(c) APPLICABILITY OF CHAPTER 16.—Except as  
24      otherwise provided in this chapter, the provisions of chap-  
25      ter 16 of this title shall apply.

1       “(d) APPLICATION FILED IN ANOTHER COUNTRY.—

2 An international design application on an industrial design  
3 made in this country shall be considered to constitute the  
4 filing of an application in a foreign country within the  
5 meaning of chapter 17 of this title if the international de-  
6 sign application is filed—

7           “(1) in a country other than the United States;  
8           “(2) at the International Bureau; or  
9           “(3) with an intergovernmental organization.

10 **“§ 383. International design application**

11       “In addition to any requirements pursuant to chapter  
12 16 of this title, the international design application shall  
13 contain—

14           “(1) a request for international registration  
15 under the treaty;

16           “(2) an indication of the designated Contracting Parties;

18           “(3) data concerning the applicant as prescribed in the treaty and the Regulations;

20           “(4) copies of a reproduction or, at the choice of the applicant, of several different reproductions of the industrial design that is the subject of the international application, presented in the number and manner prescribed in the treaty and the Regulations;

1               “(5) an indication of the product or products  
2       which constitute the industrial design or in relation  
3       to which the industrial design is to be used, as pre-  
4       scribed in the treaty and the Regulations;

5               “(6) the fees prescribed in the treaty and the  
6       Regulations; and

7               “(7) any other particulars prescribed in the  
8       Regulations.

9       **“§ 384. Filing date**

10       “(a) IN GENERAL.—Subject to subsection (b), the fil-  
11       ing date of an international design application in the  
12       United States shall be the effective registration date. Not-  
13       withstanding the provisions of this part, any international  
14       design application designating the United States that oth-  
15       erwise meets the requirements of chapter 16 of this title  
16       may be treated as a design application under chapter 16  
17       of this title.

18       “(b) REVIEW.—An applicant may request review by  
19       the Director of the filing date of the international design  
20       application in the United States. The Director may deter-  
21       mine that the filing date of the international design appli-  
22       cation in the United States is a date other than the effec-  
23       tive registration date. The Director may establish proce-  
24       dures, including the payment of a surcharge, to review the  
25       filing date under this section. Such review may result in

1 a determination that the application has a filing date in  
2 the United States other than the effective registration  
3 date.

4 **“§ 385. Effect of international design application”**

5 “An international design application designating the  
6 United States shall have the effect, for all purposes, from  
7 its filing date determined in accordance with section 384  
8 of this part, of an application for patent filed in the Patent  
9 and Trademark Office pursuant to chapter 16 of this title.

10 **“§ 386. Right of priority”**

11 **“(a) NATIONAL APPLICATION.”** In accordance with  
12 the conditions and requirements of subsections (a)  
13 through (d) of section 119 of this title and section 172  
14 of this title, a national application shall be entitled to the  
15 right of priority based on a prior international design ap-  
16 plication which designated at least one country other than  
17 the United States.

18 **“(b) PRIOR FOREIGN APPLICATION.”** In accordance  
19 with the conditions and requirements of subsections (a)  
20 through (d) of section 119 of this title and section 172  
21 of this title and the Treaty and the Regulations, an inter-  
22 national design application designating the United States  
23 shall be entitled to the right of priority based on a prior  
24 foreign application, a prior international application as de-  
25 fined in section 351(e) of this title designating at least

1 one country other than the United States, or a prior inter-  
2 national design application designating at least one coun-  
3 try other than the United States.

4       **“(e) PRIOR NATIONAL APPLICATION.—**In accordance  
5 with the conditions and requirements of section 120 of this  
6 title, an international design application designating the  
7 United States shall be entitled to the benefit of the filing  
8 date of a prior national application, a prior international  
9 application as defined in section 351(e) of this title desig-  
10 nating the United States, or a prior international design  
11 application designating the United States, and a national  
12 application shall be entitled to the benefit of the filing date  
13 of a prior international design application designating the  
14 United States. If any claim for the benefit of an earlier  
15 filing date is based on a prior international application as  
16 defined in section 351(e) of this title which designated but  
17 did not originate in the United States or a prior inter-  
18 national design application which designated but did not  
19 originate in the United States, the Director may require  
20 the filing in the Patent and Trademark Office of a cer-  
21 tified copy of such application together with a translation  
22 thereof into the English language, if it was filed in another  
23 language.

1   **“§ 387. Relief from prescribed time limits**

2       “An applicant’s failure to act within prescribed time  
3   limits in connection with requirements pertaining to an  
4   international design application may be excused as to the  
5   United States upon a showing satisfactory to the Director  
6   of unintentional delay and under such conditions, includ-  
7   ing a requirement for payment of the fee specified in sec-  
8   tion 41(a)(7) of this title, as may be prescribed by the  
9   Director.

10   **“§ 388. Withdrawn or abandoned international design**  
11           **application**

12       “Subject to sections 384 and 387 of this part, if an  
13   international design application designating the United  
14   States is withdrawn, renounced or canceled or considered  
15   withdrawn or abandoned, either generally or as to the  
16   United States, under the conditions of the treaty and the  
17   Regulations, the designation of the United States shall  
18   have no effect after the date of withdrawal, renunciation,  
19   cancellation, or abandonment and shall be considered as  
20   not having been made, unless a claim for benefit of a prior  
21   filing date under section 386(e) of this part was made in  
22   a national application, or an international design applica-  
23   tion designating the United States, or a claim for benefit  
24   under section 365(e) was made in an international appli-  
25   cation designating the United States, filed before the date  
26   of such withdrawal, renunciation, cancellation, or aban-

1 document. However, such withdrawn, renounced, canceled,  
2 or abandoned international design application may serve  
3 as the basis for a claim of priority under subsections (a)  
4 and (b) of section 386, or under subsection (a) or (b) of  
5 section 365, if it designated a country other than the  
6 United States.

7 **“§ 389. Examination of international design applica-**  
8 **tion**

9       “(a) IN GENERAL.—The Director shall cause an ex-  
10 amination pursuant to this title of an international design  
11 application designating the United States.

12       “(b) APPLICABILITY OF CHAPTER 16.—All questions  
13 of substance, and, unless otherwise required by the treaty  
14 and Regulations, procedures regarding an international  
15 design application designating the United States shall be  
16 determined as in the case of applications filed under chap-  
17 ter 16 of this title.

18       “(c) FEES.—The Director may prescribe fees for fil-  
19 ing international design applications, for designating the  
20 United States, and for any other processing, services, or  
21 materials relating to international design applications, and  
22 may provide for later payment of such fees, including sur-  
23 charges for later submission of fees.

24       “(d) ISSUANCE OF PATENT.—The Director may issue  
25 a patent based on an international design application des-

1 ignating the United States, in accordance with the provi-  
 2 sions of this title. Such patent shall have the force and  
 3 effect of a patent issued on an application filed under  
 4 chapter 16 of this title.

5 **“§ 390. Publication of international design applica-  
 6 tion”**

7 “The publication under the treaty defined in section  
 8 381(a)(1) of an international design application desig-  
 9 nating the United States shall be deemed a publication  
 10 under section 122(b).”.

11 (b) CONFORMING AMENDMENT.—The table of parts  
 12 at the beginning of title 35, United States Code, is amend-  
 13 ed by adding at the end the following:

“V. The Hague Agreement concerning international registration of in-  
 dustrial designs ..... 401”.

14 **SEC. 102. CONFORMING AMENDMENTS.**

15 Title 35, United States Code, is amended—  
 16 (1) in section 100(i)(1)(B), by striking “right  
 17 of priority under section 119, 365(a), or 365(b) or  
 18 to the benefit of an earlier filing date under section  
 19 120, 121, or 365(e)” and inserting “right of priority  
 20 under section 119, 365(a), 365(b), 386(a), or 386(b)  
 21 or to the benefit of an earlier filing date under sec-  
 22 tion 120, 121, 365(e), or 386(e)”;

23 (2) in section 102(d)(2), by striking “to claim  
 24 a right of priority under section 119, 365(a), or

1       365(b), or to claim the benefit of an earlier filing  
2       date under section 120, 121, or 365(e)" and inserting  
3       "to claim a right of priority under section 119,  
4       365(a), 365(b), 386(a), or 386(b), or to claim the  
5       benefit of an earlier filing date under section 120,  
6       121, 365(c), or 386(e);

7              (3) in section 111(b)(7)—

8                  (A) by striking "section 119 or 365(a)"  
9       and inserting "section 119, 365(a), or 386(a)",  
10      and

11                  (B) by striking "section 120, 121, or  
12       365(e)" and inserting "section 120, 121,  
13       365(c), or 386(c)",

14              (4) in section 115(g)(1), by striking "section  
15       120, 121, or 365(e)" and inserting "section 120,  
16       121, 365(c), or 386(c)",

17              (5) in section 120, in the first sentence, by  
18       striking "section 363" and inserting "section 363 or  
19       385";

20              (6) in section 154—

21                  (A) in subsection (a)—

22                      (i) in paragraph (2), by striking "sec-  
23       tion 120, 121, or 365(e)" and inserting  
24       "section 120, 121, 365(c), or 386(c)", and

1                             (ii) in paragraph (3), by striking “sec-  
2                             tion 119, 365(a), or 365(b)” and inserting  
3                             “section 119, 365(a), 365(b), 386(a), or  
4                             386(b)”; and

5                             (B) in subsection (d)(1), by inserting “or  
6                             an international design application filed under  
7                             the treaty defined in section 381(a)(1) desig-  
8                             nating the United States under Article 5 of  
9                             such treaty” after “Article 21(2)(a) of such  
10                             treaty”;

11                             (7) in section 173, by striking “fourteen years”  
12                             and inserting “15 years”;

13                             (8) in section 365(c)—

14                             (A) in the first sentence, by striking “or a  
15                             prior international application designating the  
16                             United States” and inserting “, a prior inter-  
17                             national application designating the United  
18                             States, or a prior international design applica-  
19                             tion as defined in section 381(a)(6) of this title  
20                             designating the United States”; and

21                             (B) in the second sentence, by inserting  
22                             “or a prior international design application as  
23                             defined in section 381(a)(6) of this title which  
24                             designated but did not originate in the United

1 States” after “did not originate in the United  
2 States”; and

3 ~~(9) in section 366—~~

4                   (A) in the first sentence, by striking “un-  
5 less a claim” and all that follows through  
6 “withdrawl.” and inserting “unless a claim for  
7 benefit of a prior filing date under section  
8 365(e) of this section was made in a national  
9 application, or an international application des-  
10 ignating the United States, or a claim for ben-  
11 efit under section 386(e) was made in an inter-  
12 national design application designating the  
13 United States, filed before the date of such  
14 withdrawal.”; and

15                   (B) by striking the second sentence and in-  
16 serting the following: “However, such with-  
17 drawn international application may serve as  
18 the basis for a claim of priority under section  
19 365 (a) and (b) of this part, or under section  
20 386 (a) or (b), if it designated a country other  
21 than the United States.”.

22 **SEC. 103. EFFECTIVE DATE.**

23                   (a) IN GENERAL.—The amendments made by this  
24 title shall be effective on the later of—

1                   (1) the date that is 1 year after the date of en-  
2 actment of this Act, or

3                   (2) the date of entry into force of the treaty, as  
4 defined in section 381 of title 35, as amended by  
5 this Act, with respect to the United States.

6                   (b) APPLICABILITY OF AMENDMENTS.—

7                   (1) IN GENERAL.—Subject to paragraph (2),  
8 the amendments made by this title shall apply only  
9 to international design applications, international  
10 applications as defined in section 351(e) of title 35,  
11 United States Code, and national applications filed  
12 on and after the effective date set forth in sub-  
13 section (a), and patents issuing thereon.

14                   (2) EXCEPTION.—Sections 100(i) and 102(d) of  
15 title 35, United States Code, as amended by this  
16 title, shall not apply to an application, or any patent  
17 issuing thereon, unless it is described in section  
18 3(n)(1) of the Leahy-Smith America Invents Act (35  
19 U.S.C. 100 note).

20                   **TITLE II—PATENT LAW TREATY**  
21                   **IMPLEMENTATION**

22                   **SEC. 201. PROVISIONS TO IMPLEMENT THE PATENT LAW**  
23                   **TREATY.**

24                   (a) APPLICATION FILING DATE.—Section 111 of title  
25 35, United States Code, is amended—

1                 (1) in subsection (a), by striking paragraphs  
2                 (3) and (4) and inserting the following:

3                 “(3) FEE, OATH OR DECLARATION, AND  
4                 CLAIMS.—The application shall be accompanied by  
5                 the fee required by law. The fee, oath or declaration,  
6                 and 1 or more claims may be submitted after the fil-  
7                 ing date of the application, within such period and  
8                 under such conditions, including the payment of a  
9                 surcharge, as may be prescribed by the Director.  
10                 Upon failure to submit the fee, oath or declaration,  
11                 and 1 or more claims within such prescribed period,  
12                 the application shall be regarded as abandoned.

13                 “(4) FILING DATE.—The filing date of an ap-  
14                 plication shall be the date on which a specification,  
15                 with or without claims, is received in the United  
16                 States Patent and Trademark Office.”,

17                 (2) in subsection (b), by striking paragraphs  
18                 (3) and (4) and inserting the following:

19                 “(3) FEE.—The application shall be accom-  
20                 panied by the fee required by law. The fee may be  
21                 submitted after the filing date of the application,  
22                 within such period and under such conditions, in-  
23                 cluding the payment of a surcharge, as may be pre-  
24                 scribed by the Director. Upon failure to submit the

1       fee within such prescribed period, the application  
2       shall be regarded as abandoned.

3           “(4) FILING DATE.—The filing date of a provi-  
4       sional application shall be the date on which a speci-  
5       fication, with or without claims, is received in the  
6       United States Patent and Trademark Office.”; and

7           (3) by adding at the end the following:

8           “(e) PRIOR FILED APPLICATION.—The Director may  
9       prescribe the conditions, including the payment of a sur-  
10      charge, under which a reference made upon the filing of  
11      an application under subsection (a) to a previously filed  
12      application, specifying the previously filed application by  
13      application number and the intellectual property authority  
14      or country in which the application was filed, shall con-  
15      stitute the specification and any drawings of the subse-  
16      quent application for purposes of a filing date. A copy of  
17      the specification and any drawings of the previously filed  
18      application shall be submitted within such period and  
19      under such conditions as may be prescribed by the Direc-  
20      tor. A failure to submit the copy of the specification and  
21      any drawings of the previously filed application within the  
22      prescribed period shall result in application being regarded  
23      as abandoned and treated as having never been filed.”.

24           (b) RELIEF IN RESPECT OF TIME LIMITS AND REIN-  
25      STATEMENT OF RIGHTS.—

1                 (1) IN GENERAL.—Chapter 2 of title 35, United  
2                 States Code, is amended by adding at the end the  
3                 following:

4         **“§ 27. Revival of applications; reinstatement of reex-**  
5                 **amination proceedings**

6                 “(a) IN GENERAL.—The Director may establish pro-  
7                 cedures, including the requirement for payment of the fee  
8                 specified in section 41(a)(7), to revive an unintentionally  
9                 abandoned application for patent, accept an unintention-  
10                 ally delayed payment of the fee for issuing each patent,  
11                 or accept an unintentionally delayed response by the pat-  
12                 ent owner in a reexamination proceeding, upon petition  
13                 by the applicant for patent or patent owner.”.

14                 (2) TECHNICAL AND CONFORMING AMEND-  
15                 MENT.—The table of sections for chapter 2 of title  
16                 35, United States Code, is amended by adding at  
17                 the end the following:

“27. Revival of applications; reinstatement of reexamination proceedings.”.

18         (e) RESTORATION OF PRIORITY RIGHT.—Title 35,  
19                 United States Code, is amended—

20                 (1) in section 119—

21                 (A) in subsection (a), by adding at the end  
22                 the following: “The Director may prescribe reg-  
23                 ulations, including the requirement for payment  
24                 of the fee specified in section 41(a)(7), pursu-  
25                 ant to which the 12-month period set forth in

1           this subsection may be extended by an addi-  
2           tional 2 months if the delay in filing the appli-  
3           cation in this country within the 12-month pe-  
4           riod was unintentional.”; and

5           (B) in subsection (e)—

6               (i) in paragraph (1)—

7                   (I) by inserting after the first  
8                   sentence the following: “The Director  
9                   may prescribe regulations, including  
10                  the requirement for payment of the  
11                  fee specified in section 41(a)(7), pur-  
12                  suant to which the 12-month period  
13                  set forth in this subsection may be ex-  
14                  tended by an additional 2 months if  
15                  the delay in filing the application  
16                  under section 111(a) or section 363  
17                  within the 12-month period was unin-  
18                  tentional.”; and

19                   (II) in the last sentence—

20                       (aa) by striking “including  
21                          the payment of a surcharge” and  
22                          inserting “including the payment  
23                          of the fee specified in section  
24                          41(a)(7)”; and

22 (d) RECORDATION OF OWNERSHIP INTERESTS.—  
23 Section 261 of title 35, United States Code, is amended—  
24 (1) in the first undesignated paragraph by add-  
25 ing at the end the following: “The Patent and

1       Trademark Office shall maintain a register of inter-  
2       ests in applications for patents and patents and shall  
3       record any document related thereto upon request,  
4       and may require a fee therefor.”; and

5               (2) in the fourth undesignated paragraph by  
6       striking “An assignment” and inserting “An interest  
7       that constitutes an assignment”.

8       **SEC. 202. CONFORMING AMENDMENTS.**

9               (a) IN GENERAL.—Section 171 of title 35, United  
10      States Code, is amended by adding at the end the fol-  
11      lowing:

12               “The filing date of an application for patent for de-  
13      sign shall be the date on which the specification as pre-  
14      scribed by section 112 and any required drawings are  
15      filed.”.

16               (b) RELIEF IN RESPECT OF TIME LIMITS AND REIN-  
17      STATEMENT OF RIGHT.—Title 35, United States Code, is  
18      amended—

19               (1) in section 41—

20               (A) in subsection (a), by striking sub-  
21      section (7) and inserting the following:

22               “(7) REVIVAL FEES.—On filing each petition  
23      for the revival of an abandoned application for a  
24      patent, for the delayed payment of the fee for  
25      issuing each patent, for the delayed response by the

1 patent owner in any reexamination proceeding, for  
2 the delayed payment of the fee for maintaining a  
3 patent in force, for the delayed submission of a pri-  
4 ority or benefit claim, or for the extension of the 12-  
5 month period for filing a subsequent application,  
6 \$1,700.00. The Director may refund any part of the  
7 fee specified in this paragraph, in exceptional cir-  
8 umstances as determined by the Director"; and

9 (B) in subsection (e), by striking para-  
10 graph (1) and inserting the following:

11 "(1) ACCEPTANCE.—The Director may accept  
12 the payment of any maintenance fee required by  
13 subsection (b) after the 6-month grace period if the  
14 delay is shown to the satisfaction of the Director to  
15 have been unintentional. The Director may require  
16 the payment of the fee specified in paragraph (a)(7)  
17 as a condition of accepting payment of any mainte-  
18 nance fee after the 6-month grace period. If the Di-  
19 rector accepts payment of a maintenance fee after  
20 the 6-month grace period, the patent shall be consid-  
21 ered as not having expired at the end of the grace  
22 period.";

23 (2) in section 119(b)(2), in the second sentence,  
24 by striking "including the payment of a surcharge"

1 and inserting “including the requirement for pay-  
 2 ment of the fee specified in section 41(a)(7);”;

3 (3) in section 120, in the fourth sentence, by  
 4 striking “including the payment of a surcharge” and  
 5 inserting “including the requirement for payment of  
 6 the fee specified in section 41(a)(7);”;

7 (4) in section 122(b)(2)(B)(iii), in the second  
 8 sentence, by striking “, unless it is shown” and all  
 9 that follows through “unintentional”;

10 (5) in section 133, by striking “, unless it be  
 11 shown” and all that follows through “unavoidable”;

12 (6) by striking section 151 and inserting the  
 13 following:

#### 14 **“§ 151. Issue of patent**

15 “If it appears that applicant is entitled to a patent  
 16 under the law, a written notice of allowance of the applica-  
 17 tion shall be given or mailed to the applicant. The notice  
 18 shall specify a sum, constituting the issue fee and any re-  
 19 quired publication fee, which shall be paid within 3 months  
 20 thereafter.

21 “Upon payment of this sum the patent may issue,  
 22 but if payment is not timely made, the application shall  
 23 be regarded as abandoned.”;

24 (7) in section 361, by striking subsection (e)  
 25 and inserting the following:

1       “(c) International applications filed in the Patent and  
2 Trademark Office shall be filed in the English language,  
3 or an English translation shall be filed within such later  
4 time as may be fixed by the Director.”;

5           (8) in section 364, by striking subsection (b)  
6 and inserting the following:

7       “(b) An applicant’s failure to act within prescribed  
8 time limits in connection with requirements pertaining to  
9 an international application may be excused as provided  
10 in the treaty and the Regulations.”; and

11          (9) in section 371(d), in the third sentence, by  
12 striking “, unless it be shown to the satisfaction of  
13 the Director that such failure to comply was un-  
14 avoidable”.

15 **SEC. 203. EFFECTIVE DATE.**

16       (a) IN GENERAL.—Except as provided in subsection  
17 (b), the amendments made by this title shall be effective  
18 on the date that is 1 year after the date of enactment  
19 of this Act and shall apply to all patents and to all applica-  
20 tions for patent pending on or filed after the date that  
21 is 1 year after the date of enactment of this Act.

22       (b) EXCEPTIONS.—

23           (1) SECTION 201(a).—The amendments made  
24 by section 201(a) shall apply only to applications

1 filed on or after the date that is 1 year after the  
2 date of enactment of this Act.

## **9 SECTION 1. SHORT TITLE.**

10        *This Act may be cited as the “Patent Law Treaties*  
11 *Implementation Act of 2012”.*

12 **TITLE I—HAGUE AGREEMENT**  
13 **CONCERNING INTER-**  
14 **NATIONAL REGISTRATION OF**  
15 **INDUSTRIAL DESIGNS**

16 SEC. 101. THE HAGUE AGREEMENT CONCERNING INTER-  
17 NATIONAL REGISTRATION OF INDUSTRIAL  
18 DESIGNS.

19           (a) *IN GENERAL.*—Title 35, United States Code, is  
20 amended by adding at the end the following:

21     ***PART V—THE HAGUE AGREEMENT CONCERNING***  
22        *INTERNATIONAL REGISTRATION OF INDUS-*  
23        *TRIAL DESIGNS*

**“CHAPTER**  
“38. International design applications .....

# **“CHAPTER 38—INTERNATIONAL DESIGN APPLICATIONS”**

“Sec.

**“381. Definitions.**

### *"382. Filing international design applications.*

*“383. International design application.*

"384. *Filing date.*

*"385. Effect of international design application.*

*“386. Right of priority.*

*"387. Relief from prescribed time limits.*

*“388. Withdrawn or abandoned international design application.*

*“389. Examination of international design application.*

*“390. Publication of international design application.*

### 3 “§ 381. Definitions

4       “(a) *IN GENERAL.*—When used in this part, unless the  
5 context otherwise indicates—

6               “(1) the term ‘treaty’ means the Geneva Act of  
7               the Hague Agreement Concerning the International  
8               Registration of Industrial Designs adopted at Geneva  
9               on July 2, 1999;

10                   “(2) the term ‘regulations’—

“(A) when capitalized, means the Common  
Regulations under the treaty; and

13                   “(B) when not capitalized, means the regu-  
14                   lations established by the Director under this  
15                   title;

16               “(3) the terms ‘designation’, ‘designating’, and  
17       ‘designate’ refer to a request that an international  
18       registration have effect in a Contracting Party to the  
19       treaty;

1           “(4) the term ‘International Bureau’ means the  
2       international intergovernmental organization that is  
3       recognized as the coordinating body under the treaty  
4       and the Regulations;

5           “(5) the term ‘effective registration date’ means  
6       the date of international registration determined by  
7       the International Bureau under the treaty;

8           “(6) the term ‘international design application’  
9       means an application for international registration;  
10      and

11          “(7) the term ‘international registration’ means  
12       the international registration of an industrial design  
13       filed under the treaty.

14          “(b) *RULE OF CONSTRUCTION.—Terms and expres-*  
15       *sions not defined in this part are to be taken in the sense*  
16       *indicated by the treaty and the Regulations.*

17      **“§382. Filing international design applications**

18          “(a) *IN GENERAL.—Any person who is a national of*  
19       *the United States, or has a domicile, a habitual residence,*  
20       *or a real and effective industrial or commercial establish-*  
21       *ment in the United States, may file an international design*  
22       *application by submitting to the Patent and Trademark Of-*  
23       *fice an application in such form, together with such fees,*  
24       *as may be prescribed by the Director.*

1       “(b) *REQUIRED ACTION.*—*The Patent and Trademark*  
2 *Office shall perform all acts connected with the discharge*  
3 *of its duties under the treaty, including the collection of*  
4 *international fees and transmittal thereof to the Inter-*  
5 *national Bureau. Subject to chapter 17, international de-*  
6 *sign applications shall be forwarded by the Patent and*  
7 *Trademark Office to the International Bureau, upon pay-*  
8 *ment of a transmittal fee.*

9       “(c) *APPLICABILITY OF CHAPTER 16.*—*Except as oth-*  
10 *erwise provided in this chapter, the provisions of chapter*  
11 *16 shall apply.*

12       “(d) *APPLICATION FILED IN ANOTHER COUNTRY.*—*An*  
13 *international design application on an industrial design*  
14 *made in this country shall be considered to constitute the*  
15 *filings of an application in a foreign country within the*  
16 *meaning of chapter 17 if the international design applica-*  
17 *tion is filed—*

18           “(1) *in a country other than the United States;*  
19           “(2) *at the International Bureau; or*  
20           “(3) *with an intergovernmental organization.*

21       **“§ 383. *International design application***

22       “*In addition to any requirements pursuant to chapter*  
23 *16, the international design application shall contain—*

24           “(1) *a request for international registration*  
25 *under the treaty;*

1           “(2) *an indication of the designated Contracting  
2 Parties;*

3           “(3) *data concerning the applicant as prescribed  
4 in the treaty and the Regulations;*

5           “(4) *copies of a reproduction or, at the choice of  
6 the applicant, of several different reproductions of the  
7 industrial design that is the subject of the inter-  
8 national design application, presented in the number  
9 and manner prescribed in the treaty and the Regula-  
10 tions;*

11          “(5) *an indication of the product or products  
12 that constitute the industrial design or in relation to  
13 which the industrial design is to be used, as pre-  
14 scribed in the treaty and the Regulations;*

15          “(6) *the fees prescribed in the treaty and the  
16 Regulations; and*

17          “(7) *any other particulars prescribed in the Reg-  
18 ulations.*

19          **“§ 384. Filing date**

20          “(a) *IN GENERAL.—Subject to subsection (b), the filing  
21 date of an international design application in the United  
22 States shall be the effective registration date. Notwith-  
23 standing the provisions of this part, any international de-  
24 sign application designating the United States that other-*

1 wise meets the requirements of chapter 16 may be treated  
2 as a design application under chapter 16.

3       “(b) *REVIEW*.—An applicant may request review by  
4 the Director of the filing date of the international design  
5 application in the United States. The Director may deter-  
6 mine that the filing date of the international design appli-  
7 cation in the United States is a date other than the effective  
8 registration date. The Director may establish procedures,  
9 including the payment of a surcharge, to review the filing  
10 date under this section. Such review may result in a deter-  
11 mination that the application has a filing date in the  
12 United States other than the effective registration date.

13 **“§385. Effect of international design application**

14       “An international design application designating the  
15 United States shall have the effect, for all purposes, from  
16 its filing date determined in accordance with section 384,  
17 of an application for patent filed in the Patent and Trade-  
18 mark Office pursuant to chapter 16.

19 **“§386. Right of priority**

20       “(a) *NATIONAL APPLICATION*.—In accordance with the  
21 conditions and requirements of subsections (a) through (d)  
22 of section 119 and section 172, a national application shall  
23 be entitled to the right of priority based on a prior inter-  
24 national design application that designated at least 1 coun-  
25 try other than the United States.

1       “(b) *PRIOR FOREIGN APPLICATION.*—In accordance  
2 with the conditions and requirements of subsections (a)  
3 through (d) of section 119 and section 172 and the treaty  
4 and the Regulations, an international design application  
5 designating the United States shall be entitled to the right  
6 of priority based on a prior foreign application, a prior  
7 international application as defined in section 351(c) desig-  
8 nating at least 1 country other than the United States, or  
9 a prior international design application designating at  
10 least 1 country other than the United States.

11       “(c) *PRIOR NATIONAL APPLICATION.*—In accordance  
12 with the conditions and requirements of section 120, an  
13 international design application designating the United  
14 States shall be entitled to the benefit of the filing date of  
15 a prior national application, a prior international applica-  
16 tion as defined in section 351(c) designating the United  
17 States, or a prior international design application desig-  
18 nating the United States, and a national application shall  
19 be entitled to the benefit of the filing date of a prior inter-  
20 national design application designating the United States.  
21 If any claim for the benefit of an earlier filing date is based  
22 on a prior international application as defined in section  
23 351(c) which designated but did not originate in the United  
24 States or a prior international design application which  
25 designated but did not originate in the United States, the

1 Director may require the filing in the Patent and Trade-  
2 mark Office of a certified copy of such application together  
3 with a translation thereof into the English language, if it  
4 was filed in another language.

5 **“§387. Relief from prescribed time limits**

6 “An applicant’s failure to act within prescribed time  
7 limits in connection with requirements pertaining to an  
8 international design application may be excused as to the  
9 United States upon a showing satisfactory to the Director  
10 of unintentional delay and under such conditions, includ-  
11 ing a requirement for payment of the fee specified in section  
12 41(a)(7), as may be prescribed by the Director.

13 **“§388. Withdrawn or abandoned international design**  
14 **application**

15 “Subject to sections 384 and 387, if an international  
16 design application designating the United States is with-  
17 drawn, renounced or canceled or considered withdrawn or  
18 abandoned, either generally or as to the United States,  
19 under the conditions of the treaty and the Regulations, the  
20 designation of the United States shall have no effect after  
21 the date of withdrawal, renunciation, cancellation, or aban-  
22 donment and shall be considered as not having been made,  
23 unless a claim for benefit of a prior filing date under sec-  
24 tion 386(c) was made in a national application, or an  
25 international design application designating the United

1 States, or a claim for benefit under section 365(c) was made  
2 in an international application designating the United  
3 States, filed before the date of such withdrawal, renunci-  
4 ation, cancellation, or abandonment. However, such with-  
5 drawn, renounced, canceled, or abandoned international de-  
6 sign application may serve as the basis for a claim of pri-  
7 ority under subsections (a) and (b) of section 386, or under  
8 subsection (a) or (b) of section 365, if it designated a coun-  
9 try other than the United States.

10 “**§389. Examination of international design applica-**  
11 **tion**

12 “(a) *IN GENERAL.*—The Director shall cause an exam-  
13 ination to be made pursuant to this title of an international  
14 design application designating the United States.

15 “(b) *APPLICABILITY OF CHAPTER 16.*—All questions  
16 of substance and, unless otherwise required by the treaty  
17 and Regulations, procedures regarding an international de-  
18 sign application designating the United States shall be de-  
19 termined as in the case of applications filed under chapter  
20 16.

21 “(c) *FEES.*—The Director may prescribe fees for filing  
22 international design applications, for designating the  
23 United States, and for any other processing, services, or  
24 materials relating to international design applications, and

1 may provide for later payment of such fees, including sur-  
 2 charges for later submission of fees.

3       “(d) ISSUANCE OF PATENT.—The Director may issue  
 4 a patent based on an international design application des-  
 5 ignating the United States, in accordance with the provi-  
 6 sions of this title. Such patent shall have the force and effect  
 7 of a patent issued on an application filed under chapter  
 8 16.

9       **“§ 390. Publication of international design applica-**  
 10                   **tion**

11       “The publication under the treaty of an international  
 12 design application designating the United States shall be  
 13 deemed a publication under section 122(b).”.

14       (b) CONFORMING AMENDMENT.—The table of parts at  
 15 the beginning of title 35, United States Code, is amended  
 16 by adding at the end the following:

“V. The Hague Agreement concerning international registration of industrial designs ..... 401”.

17       **SEC. 102. CONFORMING AMENDMENTS.**

18       Title 35, United States Code, is amended—

19                   (1) in section 100(i)(1)(B) (as amended by the  
 20 Leahy-Smith America Invents Act (Public Law 112–  
 21 29; 125 Stat. 284)), by striking “right of priority  
 22 under section 119, 365(a), or 365(b) or to the benefit  
 23 of an earlier filing date under section 120, 121, or  
 24 365(c)” and inserting “right of priority under section

1       119, 365(a), 365(b), 386(a), or 386(b) or to the benefit  
2       of an earlier filing date under section 120, 121,  
3       365(c), or 386(c);

4           (2) in section 102(d)(2) (as amended by the  
5       Leahy-Smith America Invents Act (Public Law 112–  
6       29; 125 Stat. 284)), by striking “to claim a right of  
7       priority under section 119, 365(a), or 365(b), or to  
8       claim the benefit of an earlier filing date under sec-  
9       tion 120, 121, or 365(c)” and inserting “to claim a  
10      right of priority under section 119, 365(a), 365(b),  
11      386(a), or 386(b), or to claim the benefit of an earlier  
12      filing date under section 120, 121, 365(c), or 386(c);

13           (3) in section 111(b)(7)—

14               (A) by striking “section 119 or 365(a)” and  
15       inserting “section 119, 365(a), or 386(a)”; and  
16               (B) by striking “section 120, 121, or  
17       365(c)” and inserting “section 120, 121, 365(c),  
18       or 386(c)”;

19           (4) in section 115(g)(1) (as amended by the  
20       Leahy-Smith America Invents Act (Public Law 112–  
21       29; 125 Stat. 284)), by striking “section 120, 121, or  
22       365(c)” and inserting “section 120, 121, 365(c), or  
23       386(c)”;

24           (5) in section 120, in the first sentence, by strik-  
25       ing “section 363” and inserting “section 363 or 385”;

1                   (6) in section 154—

2                   (A) in subsection (a)—

3                   (i) in paragraph (2), by striking “sec-  
4                   tion 120, 121, or 365(c)” and inserting  
5                   “section 120, 121, 365(c), or 386(c)”; and

6                   (ii) in paragraph (3), by striking “sec-  
7                   tion 119, 365(a), or 365(b)” and inserting  
8                   “section 119, 365(a), 365(b), 386(a), or  
9                   386(b)”; and

10                  (B) in subsection (d)(1), by inserting “or  
11                  an international design application filed under  
12                  the treaty defined in section 381(a)(1) desig-  
13                  nating the United States under Article 5 of such  
14                  treaty” after “Article 21(2)(a) of such treaty”;

15                  (7) in section 173, by striking “fourteen years”  
16                  and inserting “15 years”;

17                  (8) in section 365(c)—

18                  (A) in the first sentence, by striking “or a  
19                  prior international application designating the  
20                  United States” and inserting “; a prior inter-  
21                  national application designating the United  
22                  States, or a prior international design applica-  
23                  tion as defined in section 381(a)(6) designating  
24                  the United States”; and

1                             (B) in the second sentence, by inserting “or  
2                             a prior international design application as de-  
3                             fined in section 381(a)(6) which designated but  
4                             did not originate in the United States” after  
5                             “did not originate in the United States”; and  
6                             (9) in section 366—

7                             (A) in the first sentence, by striking “unless  
8                             a claim” and all that follows through “with-  
9                             drawal.” and inserting “unless a claim for ben-  
10                             efit of a prior filing date under section 365(c) of  
11                             this section was made in a national application,  
12                             or an international application designating the  
13                             United States, or a claim for benefit under sec-  
14                             tion 386(c) was made in an international design  
15                             application designating the United States, filed  
16                             before the date of such withdrawal.”; and

17                             (B) by striking the second sentence and in-  
18                             serting the following: “However, such withdrawn  
19                             international application may serve as the basis  
20                             for a claim of priority under section 365 (a) and  
21                             (b), or under section 386 (a) or (b), if it des-  
22                             ignated a country other than the United  
23                             States.”.

1   **SEC. 103. EFFECTIVE DATE.**

2       (a) *IN GENERAL.*—The amendments made by this title

3   shall take effect on the later of—

4           (1) the date that is 1 year after the date of the  
5       enactment of this Act; or

6           (2) the date of entry into force of the treaty with  
7       respect to the United States.

8       (b) *APPLICABILITY OF AMENDMENTS.*—

9           (1) *IN GENERAL.*—Subject to paragraph (2), the  
10      amendments made by this title shall apply only to  
11      international design applications, international ap-  
12      plications, and national applications filed on and  
13      after the effective date set forth in subsection (a), and  
14      patents issuing thereon.

15           (2) *EXCEPTION.*—Sections 100(i) and 102(d) of  
16      title 35, United States Code, as amended by this title,  
17      shall not apply to an application, or any patent  
18      issuing thereon, unless it is described in section  
19      3(n)(1) of the Leahy-Smith America Invents Act (35  
20      U.S.C. 100 note).

21       (c) *DEFINITIONS.*—For purposes of this section—

22           (1) the terms “treaty” and “international design  
23      application” have the meanings given those terms in  
24      section 381 of title 35, United States Code, as added  
25      by this title;

1                   (2) the term “international application” has the  
2 meaning given that term in section 351(c) of title 35,  
3 United States Code; and

4                   (3) the term “national application” means “na-  
5 tional application” within the meaning of chapter 38  
6 of title 35, United States Code, as added by this title.

7                   **TITLE II—PATENT LAW TREATY**  
8                   **IMPLEMENTATION**

9                   **SEC. 201. PROVISIONS TO IMPLEMENT THE PATENT LAW**

10                   **TREATY.**

11                   (a) *APPLICATION FILING DATE.*—Section 111 of title  
12 35, United States Code, is amended—

13                   (1) in subsection (a), by striking paragraphs (3)  
14 and (4) and inserting the following:

15                   “(3) *FEE, OATH OR DECLARATION, AND*  
16 *CLAIMS.*—The application shall be accompanied by  
17 the fee required by law. The fee, oath or declaration,  
18 and 1 or more claims may be submitted after the fil-  
19 ing date of the application, within such period and  
20 under such conditions, including the payment of a  
21 surcharge, as may be prescribed by the Director.  
22 Upon failure to submit the fee, oath or declaration,  
23 and 1 or more claims within such prescribed period,  
24 the application shall be regarded as abandoned.

1           “(4) *FILING DATE*.—*The filing date of an application shall be the date on which a specification, with or without claims, is received in the United States Patent and Trademark Office.*”;

5           (2) in subsection (b), by striking paragraphs (3) and (4) and inserting the following:

7           “(3) *FEE*.—*The application shall be accompanied by the fee required by law. The fee may be submitted after the filing date of the application, within such period and under such conditions, including the payment of a surcharge, as may be prescribed by the Director. Upon failure to submit the fee within such prescribed period, the application shall be regarded as abandoned.*

15           “(4) *FILING DATE*.—*The filing date of a provisional application shall be the date on which a specification, with or without claims, is received in the United States Patent and Trademark Office.*”; and

19           (3) by adding at the end the following:

20           “(c) *PRIOR FILED APPLICATION*.—*Notwithstanding the provisions of subsection (a), the Director may prescribe the conditions, including the payment of a surcharge, under which a reference made upon the filing of an application under subsection (a) to a previously filed application, specifying the previously filed application by application num-*

1   ber and the intellectual property authority or country in  
2   which the application was filed, shall constitute the speci-  
3   fication and any drawings of the subsequent application  
4   for purposes of a filing date. A copy of the specification  
5   and any drawings of the previously filed application shall  
6   be submitted within such period and under such conditions  
7   as may be prescribed by the Director. A failure to submit  
8   the copy of the specification and any drawings of the pre-  
9   viously filed application within the prescribed period shall  
10   result in the application being regarded as abandoned. Such  
11   application shall be treated as having never been filed, un-  
12   less—

13                 “(1) the application is revived under section 27;  
14                 and

15                 “(2) a copy of the specification and any draw-  
16                 ings of the previously filed application are submitted  
17                 to the Director.”.

18                 (b) *RELIEF IN RESPECT OF TIME LIMITS AND REIN-*  
19                 *STATEMENT OF RIGHTS.*—

20                 (1) *IN GENERAL.*—Chapter 2 of title 35, United  
21                 States Code, is amended by adding at the end the fol-  
22                 lowing:

1     **“§27. Revival of applications; reinstatement of reex-**  
2                         **amination proceedings**

3         “The Director may establish procedures, including the  
4 requirement for payment of the fee specified in section  
5 41(a)(7), to revive an unintentionally abandoned applica-  
6 tion for patent, accept an unintentionally delayed payment  
7 of the fee for issuing each patent, or accept an unintention-  
8 ally delayed response by the patent owner in a reexamina-  
9 tion proceeding, upon petition by the applicant for patent  
10 or patent owner.”.

11                         (2) CONFORMING AMENDMENT.—The table of sec-  
12 tions for chapter 2 of title 35, United States Code, is  
13 amended by adding at the end the following:

“27. Revival of applications; reinstatement of reexamination proceedings.”.

14                         (c) RESTORATION OF PRIORITY RIGHT.—Title 35,  
15 United States Code, is amended—

16                         (1) in section 119—

17                         (A) in subsection (a)—

18                         (i) by striking “twelve” and inserting  
19                         “12”; and

20                         (ii) by adding at the end the following:

21                         “The Director may prescribe regulations,  
22 including the requirement for payment of  
23 the fee specified in section 41(a)(7), pursu-  
24 ant to which the 12-month period set forth  
25 in this subsection may be extended by an

1           *additional 2 months if the delay in filing*  
2           *the application in this country within the*  
3           *12-month period was unintentional.”; and*

4           *(B) in subsection (e)—*

5           *(i) in paragraph (1)—*

6           *(I) by inserting after the first sen-*  
7           *tence the following: “The Director may*  
8           *prescribe regulations, including the re-*  
9           *quirement for payment of the fee speci-*  
10          *fied in section 41(a)(7), pursuant to*  
11          *which the 12-month period set forth in*  
12          *this subsection may be extended by an*  
13          *additional 2 months if the delay in fil-*  
14          *ing the application under section*  
15          *111(a) or section 363 within the 12-*  
16          *month period was unintentional.”; and*

17          *(II) in the last sentence—*

18          *(aa) by striking “including*  
19          *the payment of a surcharge” and*  
20          *inserting “including the payment*  
21          *of the fee specified in section*  
22          *41(a)(7)”;* and

23          *(bb) by striking “during the*  
24          *pendency of the application”; and*

21 (d) RECORDATION OF OWNERSHIP INTERESTS.—Sec-

22 tion 261 of title 35, United States Code, is amended—

23                             (1) in the first undesignated paragraph by add-  
24                             ing at the end the following: "The Patent and Trade-  
25                             mark Office shall maintain a register of interests in

1       *patents and applications for patents and shall record*  
2       *any document related thereto upon request, and may*  
3       *require a fee therefor.”; and*

4           (2) *in the fourth undesignated paragraph by*  
5       *striking “An assignment” and inserting “An interest*  
6       *that constitutes an assignment”.*

7 **SEC. 202. CONFORMING AMENDMENTS.**

8       (a) *IN GENERAL.—Section 171 of title 35, United*  
9 *States Code, is amended—*

10           (1) *by striking “Whoever” and inserting “(a) IN*  
11 *GENERAL.—Whoever”;*

12           (2) *by striking “The provisions” and inserting*  
13 *“(b) APPLICABILITY OF THIS TITLE.—The provi-*  
14 *sions”; and*

15           (3) *by adding at the end the following:*

16           “(c) *FILING DATE.—The filing date of an application*  
17 *for patent for design shall be the date on which the specifica-*  
18 *tion as prescribed by section 112 and any required draw-*  
19 *ings are filed.”.*

20           (b) *RELIEF IN RESPECT OF TIME LIMITS AND REIN-*  
21 *STATEMENT OF RIGHT.—Title 35, United States Code, is*  
22 *amended—*

23           (1) *in section 41—*

24           (A) *in subsection (a), by striking paragraph*

25           (7) *and inserting the following:*

1           “(7) REVIVAL FEES.—On filing each petition for  
2       the revival of an abandoned application for a patent,  
3       for the delayed payment of the fee for issuing each  
4       patent, for the delayed response by the patent owner  
5       in any reexamination proceeding, for the delayed  
6       payment of the fee for maintaining a patent in force,  
7       for the delayed submission of a priority or benefit  
8       claim, or for the extension of the 12-month period for  
9       filing a subsequent application, \$1,700.00. The Direc-  
10      tor may refund any part of the fee specified in this  
11      paragraph, in exceptional circumstances as deter-  
12      mined by the Director”; and

13           (B) in subsection (c), by striking paragraph  
14      (1) and inserting the following:

15           “(1) ACCEPTANCE.—The Director may accept the  
16      payment of any maintenance fee required by sub-  
17      section (b) after the 6-month grace period if the delay  
18      is shown to the satisfaction of the Director to have  
19      been unintentional. The Director may require the  
20      payment of the fee specified in subsection (a)(7) as a  
21      condition of accepting payment of any maintenance  
22      fee after the 6-month grace period. If the Director ac-  
23      cepts payment of a maintenance fee after the 6-month  
24      grace period, the patent shall be considered as not  
25      having expired at the end of the grace period.”;

1                   (2) in section 119(b)(2), in the second sentence,  
2       by striking “including the payment of a surcharge”  
3       and inserting “including the requirement for pay-  
4       ment of the fee specified in section 41(a)(7)”;  
5                   (3) in section 120, in the fourth sentence, by  
6       striking “including the payment of a surcharge” and  
7       inserting “including the requirement for payment of  
8       the fee specified in section 41(a)(7)”;  
9                   (4) in section 122(b)(2)(B)(iii), in the second  
10      sentence, by striking “, unless it is shown” and all  
11      that follows through “unintentional”;  
12                  (5) in section 133, by striking “, unless it be  
13      shown” and all that follows through “unavoidable”;  
14                  (6) by striking section 151 and inserting the fol-  
15      lowing:

16     **“§ 151. Issue of patent**

17                  “(a) *IN GENERAL.*—If it appears that an applicant  
18      is entitled to a patent under the law, a written notice of  
19      allowance of the application shall be given or mailed to the  
20      applicant. The notice shall specify a sum, constituting the  
21      issue fee and any required publication fee, which shall be  
22      paid within 3 months thereafter.

23                  “(b) *EFFECT OF PAYMENT.*—Upon payment of this  
24      sum the patent may issue, but if payment is not timely  
25      made, the application shall be regarded as abandoned.”;

1                   (7) in section 361, by striking subsection (c) and  
2                   inserting the following:

3                 “(c) International applications filed in the Patent and  
4                 Trademark Office shall be filed in the English language,  
5                 or an English translation shall be filed within such later  
6                 time as may be fixed by the Director.”;

7                   (8) in section 364, by striking subsection (b) and  
8                   inserting the following:

9                 “(b) An applicant’s failure to act within prescribed  
10                 time limits in connection with requirements pertaining to  
11                 an international application may be excused as provided  
12                 in the treaty and the Regulations.”; and

13                   (9) in section 371(d), in the third sentence, by  
14                 striking “, unless it be shown to the satisfaction of the  
15                 Director that such failure to comply was unavoidable”.

17 **SEC. 203. EFFECTIVE DATE.**

18                   (a) *IN GENERAL.*—The amendments made by this  
19                 title—

20                   (1) shall take effect on the date that is 1 year  
21                 after the date of the enactment of this Act; and

22                   (2) shall apply to—

23                   (A) any patent issued before, on, or after  
24                 the effective date set forth in paragraph (1); and

1                   (B) any application for patent that is  
2                   pending on or filed after the effective date set  
3                   forth in paragraph (1).

4                   (b) EXCEPTIONS.—

5                   (1) SECTION 201(a).—The amendments made by  
6                   section 201(a) shall apply only to applications that  
7                   are filed on or after the effective date set forth in sub-  
8                   section (a)(1).

9                   (2) PATENTS IN LITIGATION.—The amendments  
10                  made by this title shall have no effect with respect to  
11                  any patent that is the subject of litigation in an ac-  
12                  tion commenced before the effective date set forth in  
13                  subsection (a)(1).

**Calendar No. 532**

112<sup>TH</sup> CONGRESS  
2D SESSION  
**S. 3486**

---

---

**A BILL**

To implement the provisions of the Hague  
Agreement and the Patent Law Treaty.

---

---

SEPTEMBER 20, 2012

Reported with an amendment