

including raising public awareness about the importance of adult education, workforce skills, and family literacy;

(2) encourages people across the United States to support programs to assist those in need of adult education, workforce skills upgrading, and family literacy programs; and

(3) recognizes the importance of adult education, workforce skills, and family literacy programs, and calls upon public, private, and non-profit stakeholders to support increased access to adult education and family literacy programs to ensure a literate society.

#### AMENDMENTS SUBMITTED AND PROPOSED

SA 594. Mr. JOHNSON of Wisconsin (for himself and Mr. JOHANN) submitted an amendment intended to be proposed by him to the bill H.R. 1249, to amend title 35, United States Code, to provide for patent reform; which was ordered to lie on the table.

SA 595. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill H.R. 1249, supra; which was ordered to lie on the table.

SA 596. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill H.R. 1249, supra; which was ordered to lie on the table.

SA 597. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill H.R. 1249, supra; which was ordered to lie on the table.

SA 598. Mr. PAUL submitted an amendment intended to be proposed by him to the bill H.R. 1249, supra; which was ordered to lie on the table.

SA 599. Mr. COBURN (for himself, Mr. DEMINT, Mrs. FEINSTEIN, Mrs. BOXER, Mr. UDALL of Colorado, Mr. ENZI, and Mr. BURR) submitted an amendment intended to be proposed by him to the bill H.R. 1249, supra; which was ordered to lie on the table.

SA 600. Mr. SESSIONS (for himself, Mr. MANCHIN, Mr. COBURN, and Mr. LEE) submitted an amendment intended to be proposed by him to the bill H.R. 1249, supra; which was ordered to lie on the table.

#### TEXT OF AMENDMENTS

SA 594. Mr. JOHNSON of Wisconsin (for himself and Mr. JOHANN) submitted an amendment intended to be proposed by him to the bill H.R. 1249, to amend title 35, United States Code, to provide for patent reform; which was ordered to lie on the table; as follows:

At the appropriate place insert the following:

#### SEC. \_\_\_\_ . REGULATION MORATORIUM AND JOBS PRESERVATION ACT OF 2011.

(a) SHORT TITLE.—This section may be cited as the "Regulation Moratorium and Jobs Preservation Act of 2011".

(b) DEFINITIONS.—In this section—

(1) the term "agency" has the meaning given under section 3502(1) of title 44, United States Code;

(2) the term "regulatory action" means any substantive action by an agency that promulgates or is expected to lead to the promulgation of a final regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking;

(3) the term "significant regulatory action" means any regulatory action that is likely to result in a rule or guidance that may—

(A) have an annual effect on the economy of \$100,000,000 or more or adversely affect in a material way the economy, a sector of the

economy, productivity, competition, jobs, the environment, public health or safety, small entities, or State, local, or tribal governments or communities;

(B) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(C) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(D) raise novel legal or policy issues; and

(4) the term "small entities" has the meaning given under section 601(6) of title 5, United States Code.

(c) SIGNIFICANT REGULATORY ACTIONS.—

(1) IN GENERAL.—No agency may take any significant regulatory action, until the Bureau of Labor Statistics average of monthly unemployment rates for any quarter beginning after the date of enactment of this Act is equal to or less than 7.7 percent.

(2) DETERMINATION.—The Secretary of Labor shall submit a report to the Director of the Office of Management and Budget whenever the Secretary determines that the Bureau of Labor Statistics average of monthly unemployment rates for any quarter beginning after the date of enactment of this Act is equal to or less than 7.7 percent.

(d) WAIVERS.—

(1) NATIONAL SECURITY OR NATIONAL EMERGENCY.—The President may waive the application of subsection (c) to any significant regulatory action, if the President—

(A) determines that the waiver is necessary on the basis of national security or a national emergency; and

(B) submits notification to Congress of that waiver and the reasons for that waiver.

(2) ADDITIONAL WAIVERS.—

(A) SUBMISSION.—The President may submit a request to Congress for a waiver of the application of subsection (c) to any significant regulatory action.

(B) CONTENTS.—A submission under this paragraph shall include—

(i) an identification of the significant regulatory action; and

(ii) the reasons which necessitate a waiver for that significant regulatory action.

(C) CONGRESSIONAL ACTION.—Congress shall give expeditious consideration and take appropriate legislative action with respect to any waiver request submitted under this paragraph.

(e) JUDICIAL REVIEW.—

(1) DEFINITION.—In this subsection, the term "small business" means any business, including an unincorporated business or a sole proprietorship, that employs not more than 500 employees or that has a net worth of less than \$7,000,000 on the date a civil action arising under this section is filed.

(2) REVIEW.—Any person that is adversely affected or aggrieved by any significant regulatory action in violation of this section is entitled to judicial review in accordance with chapter 7 of title 5, United States Code.

(3) JURISDICTION.—Each court having jurisdiction to review any significant regulatory action for compliance with any other provision of law shall have jurisdiction to review all claims under this section.

(4) RELIEF.—In granting any relief in any civil action under this subsection, the court shall order the agency to take corrective action consistent with this section and chapter 7 of title 5, United States Code, including remanding the significant regulatory action to the agency and enjoining the application or enforcement of that significant regulatory action, unless the court finds by a preponderance of the evidence that application or enforcement is required to protect against an imminent and serious threat to the national security from persons or states engaged in

hostile or military activities against the United States.

(5) REASONABLE ATTORNEY FEES FOR SMALL BUSINESSES.—The court shall award reasonable attorney fees and costs to a substantially prevailing small business in any civil action arising under this section. A party qualifies as substantially prevailing even without obtaining a final judgment in its favor if the agency changes its position as a result of the civil action.

(6) LIMITATION ON COMMENCING CIVIL ACTION.—A person may seek and obtain judicial review during the 1-year period beginning on the date of the challenged agency action or within 90 days after an enforcement action or notice thereof, except that where another provision of law requires that a civil action be commenced before the expiration of that 1-year period, such lesser period shall apply.

SA 595. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill H.R. 1249, to amend title 35, United States Code, to provide for patent reform; which was ordered to lie on the table; as follows:

On page 119, strike line 21 and all that follows through page 125, line 11, and insert the following:

#### SEC. 18. TRANSITIONAL PROGRAM FOR COVERED BUSINESS-METHOD PATENTS.

(a) REFERENCES.—Except as otherwise expressly provided, wherever in this section language is expressed in terms of a section or chapter, the reference shall be considered to be made to that section or chapter in title 35, United States Code.

(b) TRANSITIONAL PROGRAM.—

(1) ESTABLISHMENT.—Not later than 1 year after the date of enactment of this Act, the Director shall issue regulations establishing and implementing a transitional post-grant review proceeding for review of the validity of covered business-method patents. The transitional proceeding implemented pursuant to this subsection shall be regarded as, and shall employ the standards and procedures of, a post-grant review under chapter 32, subject to the following exceptions and qualifications:

(A) Section 321(c) and subsections (e)(2), (f), and (g) of section 325 shall not apply to a transitional proceeding.

(B) A person may not file a petition for a transitional proceeding with respect to a covered business-method patent unless the person or his real party in interest has been sued for infringement of the patent or has been charged with infringement under that patent.

(C) A petitioner in a transitional proceeding who challenges the validity of 1 or more claims in a covered business-method patent on a ground raised under section 102 or 103 as in effect on the day prior to the date of enactment of this Act may support such ground only on the basis of—

(i) prior art that is described by section 102(a) (as in effect on the day prior to the date of enactment of this Act); or

(ii) prior art that—

(I) discloses the invention more than 1 year prior to the date of the application for patent in the United States; and

(II) would be described by section 102(a) (as in effect on the day prior to the date of enactment of this Act) if the disclosure had been made by another before the invention thereof by the applicant for patent.

(D) The petitioner in a transitional proceeding, or his real party in interest, may not assert either in a civil action arising in whole or in part under section 1338 of title 28, United States Code, or in a proceeding before the International Trade Commission that a claim in a patent is invalid on any ground

that the petitioner raised during a transitional proceeding that resulted in a final written decision.

(E) The Director may institute a transitional proceeding only for a patent that is a covered business-method patent.

(2) **EFFECTIVE DATE.**—The regulations issued pursuant to paragraph (1) shall take effect on the date that is 1 year after the date of enactment of this Act and shall apply to all covered business-method patents issued before, on, or after such date of enactment, except that the regulations shall not apply to a patent described in section 6(f)(2)(A) of this Act during the period that a petition for post-grant review of that patent would satisfy the requirements of section 321(c).

(3) **SUNSET.**—

(A) **IN GENERAL.**—This subsection, and the regulations issued pursuant to this subsection, are repealed effective on the date that is 4 years after the date that the regulations issued pursuant to paragraph (1) take effect.

(B) **APPLICABILITY.**—Notwithstanding subparagraph (A), this subsection and the regulations implemented pursuant to this subsection shall continue to apply to any petition for a transitional proceeding that is filed prior to the date that this subsection is repealed pursuant to subparagraph (A).

(C) **REQUEST FOR STAY.**—

(1) **IN GENERAL.**—If a party seeks a stay of a civil action alleging infringement of a patent under section 281 in relation to a transitional proceeding for that patent, the court shall decide whether to enter a stay based on—

(A) whether a stay, or the denial thereof, will simplify the issues in question and streamline the trial;

(B) whether discovery is complete and whether a trial date has been set;

(C) whether a stay, or the denial thereof, would unduly prejudice the nonmoving party or present a clear tactical advantage for the moving party; and

(D) whether a stay, or the denial thereof, will reduce the burden of litigation on the parties and on the court.

(2) **REVIEW.**—A party may take an immediate interlocutory appeal from a district court's decision under paragraph (1). The United States Court of Appeals for the Federal Circuit shall review the district court's decision to ensure consistent application of established precedent, and such review may be de novo.

(d) **DEFINITION.**—For purposes of this section, the term “covered business method patent” means a patent that claims a method or corresponding apparatus for performing data processing operations utilized in the practice, administration, or management of a financial product or service, except that the term shall not include patents for technological inventions. Solely for the purpose of implementing the transitional proceeding authorized by this subsection, the Director shall prescribe regulations for determining whether a patent is for a technological invention.

(e) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed as amending or interpreting categories of patent-eligible subject matter set forth under section 101.

**SA 596.** Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill H.R. 1249, to amend title 35, United States Code, to provide for patent reform; which was ordered to lie on the table; as follows:

On page 124, line 19, strike all through page 125, line 7, and insert the following:

(d) **DEFINITION.**—

(1) **IN GENERAL.**—For purposes of this section, the term “covered business method patent” —

(A) means a patent that claims a method or corresponding apparatus for performing data processing operations utilized in the practice, administration, or management of a financial product or service;

(B) shall include only patents claiming abstract business concepts; and

(C) shall not include patents for technological inventions or inventions relating predominantly to nonfinancial goods or services.

(2) **REGULATIONS.**—To assist in implementing the transitional proceeding authorized by this subsection, the Director shall issue regulations for determining whether a patent is for a technological invention or inventions relating predominantly to nonfinancial good or services.

**SA 597.** Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill H.R. 1249, to amend title 35, United States Code, to provide for patent reform; which was ordered to lie on the table; as follows:

On page 119, strike line 21 and all that follows through page 125, line 11.

**SA 598.** Mr. PAUL submitted an amendment intended to be proposed by him to the bill H.R. 1249, to amend title 35, United States Code, to provide for patent reform; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. \_\_\_\_ . SENSE OF CONGRESS.**

It is the sense of Congress that Secretary of the Treasury Timothy Geithner no longer holds the confidence of Congress or of the people of the United States.

**SA 599.** Mr. COBURN (for himself, Mr. DEMINT, Mrs. FEINSTEIN, Mrs. BOXER, Mr. UDALL of Colorado, Mr. ENZI, and Mr. BURR) submitted an amendment intended to be proposed by him to the bill H.R. 1249, to amend title 35, United States Code, to provide for patent reform; which was ordered to lie on the table; as follows:

On page 137, line 1, strike all through page 138, line 9, and insert the following:

**SEC. 22. PATENT AND TRADEMARK OFFICE FUNDING.**

(a) **DEFINITIONS.**—In this section, the following definitions shall apply:

(1) **DIRECTOR.**—The term “Director” means the Director of the United States Patent and Trademark Office.

(2) **FUND.**—The term “Fund” means the public enterprise revolving fund established under subsection (c).

(3) **OFFICE.**—The term “Office” means the United States Patent and Trademark Office.

(4) **TRADEMARK ACT OF 1946.**—The term “Trademark Act of 1946” means an Act entitled “Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes”, approved July 5, 1946 (15 U.S.C. 1051 et seq.) (commonly referred to as the “Trademark Act of 1946” or the “Lanham Act”).

(5) **UNDER SECRETARY.**—The term “Under Secretary” means the Under Secretary of Commerce for Intellectual Property.

(b) **FUNDING.**—

(1) **IN GENERAL.**—Section 42 of title 35, United States Code, is amended—

(A) in subsection (b), by striking “Patent and Trademark Office Appropriation Ac-

count” and inserting “United States Patent and Trademark Office Public Enterprise Fund”; and

(B) in subsection (c), in the first sentence—  
(i) by striking “To the extent” and all that follows through “fees” and inserting “Fees”; and

(ii) by striking “shall be collected by and shall be available to the Director” and inserting “shall be collected by the Director and shall be available until expended”.

(2) **EFFECTIVE DATE.**—The amendments made by paragraph (1) shall take effect on the later of—

(A) October 1, 2011; or

(B) the first day of the first fiscal year that begins after the date of the enactment of this Act.

(c) **USPTO REVOLVING FUND.**—

(1) **ESTABLISHMENT.**—There is established in the Treasury of the United States a revolving fund to be known as the “United States Patent and Trademark Office Public Enterprise Fund”. Any amounts in the Fund shall be available for use by the Director without fiscal year limitation.

(2) **DERIVATION OF RESOURCES.**—There shall be deposited into the Fund on or after the effective date of subsection (b)(1)—

(A) any fees collected under sections 41, 42, and 376 of title 35, United States Code, provided that notwithstanding any other provision of law, if such fees are collected by, and payable to, the Director, the Director shall transfer such amounts to the Fund, provided, however, that no funds collected pursuant to section 9(h) of this Act or section 1(a)(2) of Public Law 111-45 shall be deposited in the Fund; and

(B) any fees collected under section 31 of the Trademark Act of 1946 (15 U.S.C. 1113).

(3) **EXPENSES.**—Amounts deposited into the Fund under paragraph (2) shall be available, without fiscal year limitation, to cover—

(A) all expenses to the extent consistent with the limitation on the use of fees set forth in section 42(c) of title 35, United States Code, including all administrative and operating expenses, determined in the discretion of the Under Secretary to be ordinary and reasonable, incurred by the Under Secretary and the Director for the continued operation of all services, programs, activities, and duties of the Office relating to patents and trademarks, as such services, programs, activities, and duties are described under—

(i) title 35, United States Code; and

(ii) the Trademark Act of 1946; and

(B) all expenses incurred pursuant to any obligation, representation, or other commitment of the Office.

(d) **ANNUAL REPORT.**—Not later than 60 days after the end of each fiscal year, the Under Secretary and the Director shall submit a report to Congress which shall—

(1) summarize the operations of the Office for the preceding fiscal year, including financial details and staff levels broken down by each major activity of the Office;

(2) detail the operating plan of the Office, including specific expense and staff needs for the upcoming fiscal year;

(3) describe the long term modernization plans of the Office;

(4) set forth details of any progress towards such modernization plans made in the previous fiscal year; and

(5) include the results of the most recent audit carried out under subsection (f).

(e) **ANNUAL SPENDING PLAN.**—

(1) **IN GENERAL.**—Not later than 30 days after the beginning of each fiscal year, the Director shall notify the Committees on Appropriations of both Houses of Congress of the plan for the obligation and expenditure of the total amount of the funds for that fiscal year in accordance with section 605 of the

Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006 (Public Law 109-108; 119 Stat. 2334).

(2) CONTENTS.—Each plan under paragraph (1) shall—

(A) summarize the operations of the Office for the current fiscal year, including financial details and staff levels with respect to major activities; and

(B) detail the operating plan of the Office, including specific expense and staff needs, for the current fiscal year.

(f) AUDIT.—The Under Secretary shall, on an annual basis, provide for an independent audit of the financial statements of the Office. Such audit shall be conducted in accordance with generally acceptable accounting procedures.

(g) BUDGET.—The Fund shall prepare and submit each year to the President a business-type budget in a manner, and before a date, as the President prescribes by regulation for the budget program.

(h) SURCHARGE.—Notwithstanding section 11(i)(1)(B), amounts collected pursuant to the surcharge imposed under section 11(i)(1)(A) shall be credited to the United States Patent and Trademark Office Public Enterprise Fund.

**SA 600.** Mr. SESSIONS (for himself, Mr. MANCHIN, Mr. COBURN, and Mr. LEE) submitted an amendment intended to be proposed by him to the bill H.R. 1249, to amend title 35, United States Code, to provide for patent reform; which was ordered to lie on the table; as follows:

On page 149, line 20, strike all through page 150, line 16.

## NOTICES OF HEARINGS

### JOINT SELECT COMMITTEE ON DEFICIT REDUCTION

Mrs. MURRAY. Mr. President, I wish to announce that Joint Select Committee on Deficit Reduction will meet in open session on Thursday, September 8, 2011, at 10:30 a.m. in room 2123 of the Rayburn House Office Building, to consider proposed committee rules.

### JOINT SELECT COMMITTEE ON DEFICIT REDUCTION

Mrs. MURRAY. Mr. President, I wish to announce that Joint Select Committee on Deficit Reduction will meet in open session on Tuesday, September 13, 2011, at 10:30 a.m., in room 216 of the Hart Senate Office Building, to conduct a hearing entitled “The History and Drivers of Our Nation’s Debt and Its Threats.”

### COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. HARKIN. Mr. President, I wish to announce that the Committee on Health, Education, Labor, and Pensions will meet in open session on Wednesday, September 14, 2011, at 10 a.m. in SD-430 to conduct a hearing entitled “Securing the Pharmaceutical Supply Chain.”

For further information regarding this hearing, please contact Elizabeth Jungman of the committee staff on (202) 224-7675.

## AUTHORITY FOR COMMITTEES TO MEET

### COMMITTEE ON FOREIGN RELATIONS

Mr. LEAHY. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on September 7, 2011, at 10 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

### COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. LEAHY. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate on September 7, 2011, at 10 a.m. to conduct a hearing entitled “Defending the Nation Since 9/11: Successful Reforms and Challenges Ahead at the Department of Homeland Security.”

The PRESIDING OFFICER. Without objection, it is so ordered.

### COMMITTEE ON THE JUDICIARY

Mr. LEAHY. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate, on September 7, 2011, at 10 a.m., in room SD-226 of the Dirksen Senate Office Building, to conduct a hearing entitled “Cybercrime: Updating the Computer Fraud and Abuse Act to Protect Cyberspace and Combat Emerging Threats.”

The PRESIDING OFFICER. Without objection, it is so ordered.

### COMMITTEE ON THE JUDICIARY

Mr. LEAHY. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate, on September 7, 2011, at 2:30 p.m., in room SD-226 of the Dirksen Senate Office Building, to conduct a hearing entitled “Nominations.”

The PRESIDING OFFICER. Without objection, it is so ordered.

## PRIVILEGES OF THE FLOOR

Mr. MERKLEY. Mr. President, I ask unanimous consent that my intern, Yan Perng, have the privilege of the floor for the balance of the day.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARKIN. Mr. President, I ask unanimous consent that Madeleine Bien and Mandy McClure of my staff be granted floor privileges for the duration of today’s proceedings.

The PRESIDING OFFICER. Without objection, it is so ordered.

## PROVIDING FOR A JOINT SESSION OF CONGRESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H. Con. Res. 74.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 74) providing for a joint session of Congress to receive a message from the President.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. REID. Mr. President, I ask unanimous consent the resolution be agreed to, the motion to reconsider be laid upon the table, there be no intervening action or debate, and any statements related to the resolution be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (H. Con. Res. 74) was agreed to.

## NATIONAL CELIAC DISEASE AWARENESS DAY

Mr. REID. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. Res. 219 and the Senate proceed to its consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 219) designating September 13, 2011, as “National Celiac Disease Awareness Day”.

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to the measure be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 219) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

### S. RES. 219

Whereas celiac disease affects approximately 1 in every 130 people in the United States, for a total of 3,000,000 people;

Whereas the majority of people with celiac disease have yet to be diagnosed;

Whereas celiac disease is a chronic inflammatory disorder that is classified as both an autoimmune condition and a genetic condition;

Whereas celiac disease causes damage to the lining of the small intestine, which results in overall malnutrition;

Whereas when a person with celiac disease consumes foods that contain certain protein fractions, that person suffers a cell-mediated immune response that damages the villi of the small intestine, interfering with the absorption of nutrients in food and the effectiveness of medications;

Whereas such problematic protein fractions are found in wheat, barley, rye, and oats, which are used to produce many foods, medications, and vitamins;

Whereas because celiac disease is a genetic disease, there is an increased incidence of celiac disease in families with a known history of celiac disease;

Whereas celiac disease is underdiagnosed because the symptoms can be attributed to